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The True Issue, and the Duty of the Whigs.

AN

ADDRESS

BEFORE

THE CITIZENS OF CAMBRIDGE,

OCTOBER 1, 1856.

BY

JOEL PARKER.

CAMBRIDGE:
JAMES MUNROE AND COMPANY
1856.

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Some portions of this Address were necessarily omitted in the delivery, and the speaker for that reason remarked that he should have to follow the precedents in Congress, and ask leave to publish his speech. The response, to say nothing of subsequent requests, may be allowed to justify the publication of it entire. The Constitutional argument may perhaps be of some value.

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ADDRESS.

MR. PRESIDENT AND FELLOW-CITIZENS:—

YOUR kind greeting encourages the belief that you will permit me to say a few words in the first person singular. The effect of what I may say at this time, supposing it to have any effect, may depend very much upon the character in which I appear before you. But, for another and a different reason, let it be distinctly understood, that I do not, upon this occasion, represent the sentiments of any department of Harvard College, and am not here as the Royall Professor. Upon some of the topics upon which I may speak, it would have given me pleasure to have held a free conversation with my associates in the Law School, but I sedulously avoided it in order to make this disclaimer, and have no reason to suppose that they concur in my opinions, except a belief that the doctrine is sound, and that they, therefore, as wise men, must approve of it.

I come before you, then, as a citizen of Cambridge, a constitutional lawyer, if you please, and especially as a Whig; as one who has been a Whig since the formation of the Whig party;—withdrawn in a measure from ordinary political contests, but known as a Whig.

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It was said in 1852 that an eminent member of the Whig party prophesied that there would be no Whig party after the presidential election that year. Certain it is, that many of the friends of that great statesman did what they could to accomplish such a result by voting for the present occupant of the presidential chair. I was not "left" to do that, but supported, in good faith, the Whig candidate. When the citizens of Cambridge, in 1853, elected me a delegate to the Constitutional Convention, it was as a Whig. And at the last gubernational election, while approving to some extent the efforts of the American party, sympathizing with some of the principles of the Freesoil party, and honoring Governor Gardner for measures of his administration, which others of his friends disapproved, it did not appear expedient to separate myself from a party which still clung to existence, and I formed one of the forlorn hope which voted for the Whig nominee.

The result of that election showed very clearly that the party, as an effective party, no longer had any existence, and left to its members the inquiry, — With what party and in what connection shall a Whig hereafter endeavor to perform the duty which a good citizen owes to his country?

The Fugitive Slave Law of 1850 could not have had my vote, because there is no provision in it securing a trial to the fugitive on his rendition and return, and there are obnoxious sections which serve only to exasperate the citizens of the non-slave-holding States, and seem almost designed for the purpose of insult. But believing it to be, however unwise, a constitutional enactment, in my public teachings and private discourse, I have maintained the constitutionality of that law, and stopped a religious newspaper, conducted with great ability, on account of my disapproval of the encourage-

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ment it gave to a forcible resistance to the execution of that law.

I may claim, therefore, to be a Whig, a Massachusetts Whig, a Conservative Whig, a National Whig; perhaps as sound an expositor of Whig principles as if I were a member of the Whig State Central Committee itself.

The events which have occurred within a recent period, have rendered the inquiry, " in what connection shall a whig hereafter endeavor to perform the duty which a good citizen owes to his country," one of exceeding interest. Notwithstanding the opposition to the Compromise Measures, as they were called, of 1850, the country was settling down to a quiet acquiescence, when in 1854 came the repeal of the Missouri Compromise Act of 1820. Some of you must well recollect the circumstances which occurred in 1819 and 1820, connected with the admission of Missouri into the Union;—the stern and determined opposition to its admission, unless coupled with a restriction of slavery within its limits. You doubtless recall the joy with which you hailed vote after vote in the House of Representatives, seeming almost to insure the triumph of freedom; and the revulsion of feeling, almost dismay, with which you learned, at last, that Missouri had been admitted without restriction, upon a compromise by which slavery was thereafter to be excluded from all territory north of 36° 30′ north latitude.

This compromise was eminently a Southern measure, carried as such measures always are, by the aid of a few Northern votes; and it was treated for the time in the slave-holding States as something more sacred than ordinary legislative enactments;—as a kind of semi-constitutional law, securing all south of 36° 30′ to slavery. A proposition to repeal it would have been a crime second only to

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treason. But when, after the third of a century, the time came for the enjoyment of the equivalent supposed to be secured to the non-slave-holding States, it was all at once discovered that the compromise part was not only a mere legislative act, but that it was unconstitutional legislation. Then the doctrine arose, that slavery could not be excluded by Congress from the territories; and slavery having secured the benefit, rejected the burden attached to it, by a repeal of the restriction. Until very recently I had supposed that this repeal was a project of Mr. Douglas to secure the favor of the slave-holding States, and that the President was drawn in to its support, by the fear that Douglas would take the wind out of his sails in the approaching presidential boat-race; but a friend has just furnished me a copy of a New York paper containing what appears to be an authentic statement, derived from a gentleman who has spent several years in Western Missouri, showing that Douglas is not entitled to the credit, if credit it may be called, of originating the nefarious plot. His was only a secondary agency in wickedness. It seems that the Ahabs of Western Missouri have long coveted the fertile vineyard of Kansas as an addition to their slave-holding possessions, and that they determined to possess themselves of it after the manner of their great prototype, peaceably, if they could, forcibly, if they must.

Permit me to read an extract: —

"The slavery party in Missouri, under the lead of David R. Atchison, have long had their eyes upon the Kansas Territory, and were resolved upon the most desperate expedients to carry slavery there whenever it should be opened for settlement. Having no idea that it would ever be possible to procure the abrogation of the Missouri Compromise restriction, their plan was to keep every thing quiet as possible, until they could have every thing ready,

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procure a territorial charter, slip over a sufficient number of their own men to elect a territorial legislature, and as soon as possible form a State government and get admitted to the Union, and before the people of the free States should suspect what was going on, establish slavery by an act of the new State legislature. In the latter part of 1853, almost a year before the passage of the Nebraska Bill, a public meeting was held in Platte county, Missouri, to consider the affairs of Kansas. Atchison made a speech, and was the master-spirit of the meeting; and it was

"'*Resolved*, That if the Territory shall be opened to settlement, we pledge ourselves to each other *to extend the institutions of Missouri over the Territory*, at whatever sacrifice of blood or treasure.'

"These resolutions were published in the *Platte Argus*. This was long before Douglas had thought of venturing upon the repeal. The pledge there given is still operating upon those people, and its force precludes the idea that peace can ever come to Kansas, until it shall be fully admitted to the Union with its institutions all consolidated as a FREE STATE.

"This meeting attracted little public attention at the time, but it furnishes the key to all the subsequent history. Atchison has since explained the process by which he bullied and terrified Pierce and Douglas into the fatal measure of repealing the restriction. The Blue Lodges began to be formed immediately after; for it was testified before the Congressional Committee, by Jordan Davison, a Missourian and a Border Ruffian, that he was in a Blue Lodge at Pleasant Hill, Missouri, in February, 1854, the avowed object being to make Kansas a slave State, while the Nebraska Bill became a law on the 30th of June, 1854, and the Emigrant Aid Society of Boston held its first meeting on the 30th of July, 1854. A resolution was adopted on the 10th of June, at Parkville, Missouri, and within that and the following month was repeatedly adopted by other meetings both in Missouri and Kansas, debarring 'abolitionists' from entering Kansas, — in which term they include all friends of free labor, — declaring that the institution of slavery already existed in the Territory, and recommending to slave-holders to introduce their property as fast as possible."

You have here what purports to be a copy of a resolution passed at a public meeting in Platte County, in 1853, and then published in the Platte Argus. It seems that there can be no mistake, and that the determination was then

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formed to make Kansas a slave State at whatever sacrifice of blood and treasure. The ambition of Douglas, and the fears of the President were appealed to for aid and support by a repeal of the Compromise; and thereupon the political Nebuchadnezzars, who ought to have been turned out to grass long since, erected an image, composed mainly of brass, styling it "squatter sovereignty;" — and General Cass fell down and worshipped it.

It is not necessary to detail to you how the doctrine, that the settlers of a territory have a right to determine their own institutions, has since been carried out in practice by those who promulgated it. The ruffians of Western Missouri, true to their determination to extend their institutions over Kansas, marched over the border well provided with bowie knives and revolvers, voted where that served their purpose, destroyed the ballot-boxes where that was better, drove the Free State voters from the polls, and elected a majority of the territorial legislature. A more gross case of usurpation never existed. But this was only the beginning of what is not yet ended. The usurping legislature met, turned out the members who were legally elected, and proceeded to pass a set of laws which would disgrace Turkey or Algiers. The inhabitants protested, and refused to recognize the authority of the usurpers, and were maltreated, beaten, and some of them murdered. They appealed to the United States authorities for protection; and the answer received reminded me at the time of an anecdote I read several years since, and which, being professional, has dwelt upon my recollection. A lawyer named Jones, with no great knowledge of the law, had become "cock of the walk" in one of the county courts of Virginia, and managed the court at his pleasure. A young lawyer settled in the county, and having superior pro-

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fessional knowledge, interposed legal objections in one of Jones's suits, which the latter could not answer; and he thereupon became very much enraged, and swore profanely. The young advocate finally appealed to the court with the question, whether it was proper for Mr. Jones to swear in the presence of the court. The court held a grave consultation, and delivered judgment in this wise: "Mr. H., if you don't leave off making Mr. Jones swear so, the court will commit you." So seemed to be the answer of the general government to the appeal of the Free State settlers of Kansas for protection. "Gentlemen, if you don't leave off making these border ruffians commit all this violence, you shall be arrested for insurrection."

But the matter soon became too serious for a jest respecting it. The threats of arrest, it soon appeared, were no empty menace. To all appeals for protection, the answer was, "You must obey the laws." And what were the laws to which obedience was thus required? Permit me to give you a specimen of them.

"If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this Territory, or shall introduce into this Territory, print, publish, write, circulate, or cause to be introduced into this Territory, written, printed, published, or circulated in this Territory, any book, paper, magazine, pamphlet, or circular, containing any denial of the right of persons to hold slaves in this Territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years.

"No person who is conscientiously opposed to holding slaves, or who does not admit the right to hold slaves in this Territory, shall sit as a juror on the trial of any prosecution for any violation of any of the sections of this act.

"If any person offering to vote shall be challenged and required to take an oath or affirmation, to be administered by one of the judges of the election, that he will sustain the provisions of the above-recited acts of Con-

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gress, [the Fugitive Slave Laws of 1793 and 1850,] and of the act entitled 'An Act to organize the Territories of Nebraska and Kansas,' approved May 30, 1854, and shall refuse to take such oath or affirmation, the vote of such person shall be rejected.

"Each member of the legislative assembly, and every officer elected or appointed to office under the laws of this Territory, shall, in addition to the oath or affirmation specially provided to be taken by such officer, take an oath or affirmation to support the Constitution of the United States, the provisions of an act entitled 'An Act respecting fugitives from justice and persons escaping from the service of their masters,' approved February 12, 1793; and of an act to amend and supplementary to said last-mentioned act, approved September 18, 1850; and of an act entitled 'An Act to organize the Territories of Nebraska and Kansas,' approved May 30, 1854."

"Every person obtaining a license shall take an oath or affirmation to support the Constitution of the United States, and to support and sustain the provisions of an act entitled 'An Act to organize the Territories of Nebraska and Kansas,' and the provisions of an act commonly known as 'The Fugitive Slave Law,' and faithfully to demean himself in his practice to the best of his knowledge and ability. A certificate of such oath shall be indorsed on the license.

"If any person shall practise law in any court of record, without being licensed, sworn, and enrolled, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

"Every person who may be sentenced by any court of competent jurisdiction, under any law in force within this Territory, to punishment by confinement and hard labor, shall be deemed a convict, and shall immediately, under the charge of the keeper of such jail or public prison, or under the charge of such person as the keeper of such jail or public prison may select, be put to hard labor, as in the first section of this act specified; and such keeper or other person having charge of such convict, shall cause such convict, while engaged at such labor, to be securely confined by a chain six feet in length, of not less than four sixteenths nor more than three eighths of an inch links, with a round ball of iron of not less than four nor more than six inches in diameter, attached, which chain shall be securely fastened to the ankle of such convict with a strong lock and key; and such keeper or other person having charge of such convict, may, if necessary, confine such

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convict, while so engaged at hard labor, by other chains or other means in his discretion, so as to keep such convict secure and prevent his escape; and when there shall be two or more convicts under the charge of such keeper, or other person, such convicts shall be fastened together by strong chains, with strong locks and keys, during the time such convicts shall be engaged in hard labor without the walls of any jail or prison."

You perceive how cunningly devised this code was to secure the introduction of slavery into Kansas. All persons opposed to slavery were disfranchised and gagged. If they dared to speak even against the right to hold slaves in the territory, they were to be deemed guilty of felony, and subjected to imprisonment at hard labor for a term not less than two years, and might be let out to work on the public highway, fettered with a chain and ball, after the manner of those convicted of the most infamous crimes under the worst of despotisms.

Fellow-Citizens! If the people of Kansas had quietly submitted to this usurpation and oppression, they would have deserved to be slaves themselves; nay, the very act of submission would have made them slaves. The wrongs inflicted on the colonists by the mother country, which led to the Revolution, bear no comparison with this monstrous injustice.

The people attempted to relieve themselves in the only way which seemed to be practicable, without a resort to violence. Following the example set by the people of Michigan, they chose delegates to a Convention for the formation of a Constitution, in advance of an authority for that purpose, and asked for admission into the Union as a State. But what was good constitutional allegiance in Michigan, was treason in Kansas. A refusal to be gagged, was insurrection; and asking to be admitted into the Union as peacea-

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ble citizens, desirous of escaping from oppression, was treason against the peace and dignity of the United States. The more prominent of the free State settlers who did not escape were arrested and imprisoned on this charge of treason, while reiterating their protestations of allegiance and devotion to the Union, and for the crime of seeking admission into it; and armed bands, coming from abroad to secure the ascendency of slavery by force, were let loose, to ravage the possessions of those whose only offence was that they were supporters of free institutions. Our fathers had no very favorable opinion of the Hessians in the war of the Revolution. But the Hessians were not volunteers in the attempt to subjugate the colonists, and committed no atrocities beyond those usually attendant upon a state of warfare. Not so with the bands of ragamuffins who have invaded Kansas. It has been said that civil war was raging there. My friends, let us do no injustice to civil war. It has horrors enough to answer for which properly belong to it. But the robbery and arson, the pillage and murder which have been rife in Kansas within the last year, are not civil war. I intend no pun in saying this. The case is too grave and sad for that. I mean to say that it is not war which has raged in Kansas; but it is rapine and destruction, and cold-blooded, wilful murder. We have been accustomed, when we wished to express our sense of the damning infamy of atrocious deeds of violence or plunder, in the superlative of condemnation, to characterize them as piracy, and the perpetrators as pirates. But it has been reserved to the Atchison men, and the Buford men, and the Titus men, and the Emory men, in Kansas, to make piracy comparatively respectable, inasmuch as they have shown that there is a depth of infamy more profound than pirate ever yet has sounded. The buccaneers of former

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days did not hold out a false signal of equal rights, and then gag and plunder and murder their victims, under the hollow pretence of being a territorial militia, enforcing the laws.

The result of this horrible iniquity has been stated in the appeals for aid recently made to the people of the Eastern States. God grant that hearts may feel and hands may open as they never felt and opened before, in aid of the Free State settlers in Kansas, that the storms of the coming winter may not sweep over the desolate hearthstones of those who have perilled their all in the cause of freedom.

It has been said in high quarters and low quarters that all the difficulties in Kansas have been occasioned by the Emigrant Aid Society; that if it had not been for the interference of that Society, Kansas would in the natural course of things have come in quietly as a free State. But the resolution of the Platte County borderers, adopted before the Emigrant Aid Society was even thought of, show the utter hollowness and falsity of all such pretences. I have no authority to speak for the Emigrant Aid Society, and know nothing of its plans and purposes except what is before the public. I am willing to take it for granted that the main object of that society was to facilitate the introduction of settlers into Kansas with a view of making it a free State, and perhaps of ultimately deriving a profit to the corporation. If it were solely with the purpose of aiding in the settlement, with the view of securing the Territory to freedom, it was a perfectly legitimate object. The repeal of the Compromise opened the Territory to such efforts on both sides. It was just what was to have been anticipated. So long as the effort was made in good faith to promote actual settlement, no reasonable exception could be taken. — It was the introduction of those who were not settlers, for the purpose of voting and over-

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awing the inhabitants, which furnished ground of complaint; and I have yet to learn that there is a particle of evidence that the Emigrant Aid Society has done any such thing. What has been charged upon it was that it paid the expenses of emigrants, which it had a perfect right to do, but which it denies having done.

I am aware that near the close of the examinations before the investigating committee of the House of Representatives, some testimony was introduced to the effect that two or three persons who were leaving the Territory just after the election, said the Emigrant Aid Society paid their expenses to come there and vote. Some reckless person may so have said, but I doubt it. If the declaration were made under the circumstances stated, it would furnish no proof against the society or its members. But no such charge was made or suggested until the damning proof of illegal voting by the Missourians required some set-off, if one could possibly be conjured up. And then came this proof of declarations by nobody knows who. It was entirely an after-thought. No one with a grain of common sense, and any knowledge of the facts, ever believed a word of it. It may be true that if Kansas becomes a free State it will be owing to the lawful and judicious action of the members of the society, counteracting the unholy projects of the border slave-holders, and the unscrupulous politicians. This is the head and front of its offending. Honor, then, to the Emigrant Aid Society. Honor to the City of Lawrence, which it founded, and to its Free State hotel, the walls of which still stand, notwithstanding the patriotic labors of the sheriff's posse. And, above all, and beyond all, honor to the stout hearts and strong arms which have resisted oppression, and abide the issue with the stern determination that Kansas shall be free.

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It was but a matter of course that great interest should be manifested respecting the course of the different political parties on the subject in the impending presidential election. There are three parties in the field, and we have their platforms before us. It may be well to devote a few moments to a review of them. The Democratic Convention have collected together a mass of truisms about which no controversy exists, and reëndorsed their adhesion, nominally, to all that they have maintained heretofore. There is a declaration of eternal hostility to a National Bank. As the Bank was killed by General Jackson, about a quarter of a century ago, and Mr. Webster long since characterized it as an obsolete idea, this plank of the platform was probably designed as a wooden slab, to be placed over its grave. There is a resolution in favor of the veto power, and another against a system of internal improvements. But a democratic Senate having, within a few days, passed bill after bill making appropriations for internal improvements, over, and notwithstanding, the President's veto, it seems clear that these are shifting planks of the platform, which can be removed at any time when the party is in danger, if it stand too firmly upon them. There is a resolution in favor of the sub-treasury, respecting which no one now proposes a change; and one against fostering one branch of industry at the expense of another, which no one seeks to do. There is a resolution that it is the duty of the government to enforce and practise the most rigid economy in conducting our public affairs — exemplified by a most wasteful and extravagant expenditure whenever the party is in power; and one in favor of a strict construction of the Constitution — which the party uniformly construes in the most lax manner, or wholly disregards upon flimsy pretexts, whenever it suits their purposes. Witness, for ex-

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ample, the admission of Texas, with an agreement that it shall be divided into five States, there being no constitutional authority for the admission, or the agreement. There are resolutions against the American party, the design of which is to secure the vote of the naturalized citizens, while the party privately makes love to the American party, and proposes a union whenever the defeat of the Republican party shall require it. So much for show and humbug ; and then comes the plank of planks, in the denunciation of the Republican party as a sectional party, in the support of the extension of slavery by the repeal of the Missouri Compromise, — in the nominal recognition of the right of the inhabitants of the territories to form their own institutions respecting slavery, — a principle which the party were violating in Kansas at the very time it was promulgated ; closing with a call upon the next administration for every proper effort to secure our ascendency in the Gulf of Mexico ; which means, being interpreted, that measures be taken to give Cuba the opportunity to form her institutions, in the faith that she cannot form them amiss in relation to slavery.

The American party, or rather the southern section of it, after a political thanksgiving, presents the perpetuation of the Federal Union, the recognition of the reserved rights of the States, non-intervention in those things that belong exclusively to individual States — opposition to a union between church and state — investigation into abuses, and strict economy ; respecting all which, that party has no distinctive features. There is, besides, the maintenance and enforcement of all laws, until said laws shall be repealed, or shall be declared null and void by competent judicial authority, which is broad enough to embrace the enforcement of the laws of the usurping legislature of Kansas, and was probably de-

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signed to cover that very case, in the slave-holding States at least. Witness the nomination of Donelson, to say nothing, just now, of Mr. Fillmore. The remaining portion relates mainly to the distinctive principle of that party, that "Americans must rule America."

The Republican party, addressing its call to all without regard to past differences, who agree in its principles, first resolved "that the maintenance of the principles promulgated in the Declaration of Independence, and embodied in the Federal Constitution, are essential to the preservation of our republican institutions, and that the Federal Constitution, the rights of the States, and the union of the States, shall be preserved." This, with an indorsement of some particular principles of the Declaration and of the Constitution may be regarded as "the glittering and sounding generalities" of the platform. The application of these principles to the non-extension of slavery, with a recital of the wrongs of Kansas and a resolution in favor of her admission under the Topeka constitution, the denunciation of the highwayman's plea, that "might makes right," and a declaration of opposition to all legislation impairing the security of liberty of conscience and equality of rights among citizens, furnish the fanatical and sectional portion of it. There is besides a support of a railroad to the Pacific, and other internal improvements of a national character.

There is nothing in the platform of either of these parties adverse to the integrity of the Union. On the contrary, each professes its entire devotion to it. And the Union is in just about as much danger from the success of one as that of another. The dissolution of the Union is not dependent immediately upon the issue of this election. The great, the all absorbing issue in the controversy is the extension or

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non-extension of slavery into Kansas, and the Union is eventually in quite as much danger from its extension as from its non-extension, although there is not so much said about it. I am free to admit, that if slavery is imposed upon Kansas and such a monstrous iniquity as has occurred shall be approved, my faith in the virtue and capacity of the people to sustain a wise and just republican government will be somewhat shaken. If the people so decide, "God save the Commonwealth." But they are too much aroused just now to permit any such thing. Of prophesies and threats there has been an abundance. It is asserted that somebody has said, "if slavery is extended, the Union is worthless and ought to be dissolved." And somebody has said, that if sixteen States elect a President, fifteen States won't stand that. And somebody else has said, that if Colonel Fremont is elected it will be the duty of somebody to march to Washington and seize the archives and the treasury. I had rather have the sub-treasury at New York than the treasury. These exhibitions of froth and folly are not all on one side of any particular line. Nor do the people who make them all wear petticoats; but it is true that some of them come from old grannies, whose age and experience should have taught them better.

We have seen that the real issue in the present Presidential canvass is between the Democratic and the Republican parties, — the extension or the non-extension of slavery. All other matters are at this time of minor import. The distinctive principle of the American party, be it good or bad, is out of sight at present, swallowed up in the all absorbing question whether slavery shall be imposed upon Kansas. The party may perhaps preserve its organization. The result of its action in this election will avail it nothing further;

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but its capacity for mischief by a pertinacious adherence to its candidates may be very great.

What is the duty of the Whigs? What is now the duty of those who, with a steady adhesion to their principles and a cheerful devotion to the cause, have followed the glorious Whig banner so long as it was flung to the breeze, alike conscious of a faithful performance of duty, whether in victory or defeat?

Some of those who have heretofore been prominent members of the Whig party have announced their intention to support Mr. Buchanan. It has been reported, that a distinguished gentleman of our own State upon being rallied upon his transition from the Whig to the Democratic party, replied, that if he was about to leave the ranks of Orthodoxy he would not stop at Arminianism, but would go on to infidelity at once. What a marvellous felicity of illustration that gentleman possesses!

Another gentleman known as a Whig, a senator from Missouri, in declaring his intention to vote for Mr. Buchanan, says, "while I cannot approve and do not intend to adopt the platform of principles promulgated by the late Democratic convention at Cincinnati, I feel assured that notwithstanding the exceptional doctrines it announces, especially those referring to our foreign relations, the administration of Mr. Buchanan would be safe, prudent, and conservative." For myself, I do not understand this support of Mr. Buchanan without adopting his platform. It is said that he is the platform. There is no such separation to be made. If you vote for the man, you vote for the platform, for he is pledged to it. A man may

> "Steal the livery of the court of heaven
> To serve the devil in."

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But the service he performs will be a devilish service, and the anthems he sings will not be "holiness to the Lord." A man may train in the Democratic ranks with a Whig overcoat on, but he must hurrah for the Democratic candidates and keep step to the music of the Democratic party. The outward habiliments will not determine the character. The ass covered his shoulders with the lion's skin, but the tremendous roar which he expected would follow turned out to be nothing but the bray of the donkey, after all.

Let no Whig vote for Mr. Buchanan with the supposition that the Democratic party have changed their policy respecting Kansas. Up to the time of the election in Maine, no measures were taken by the administration for the relief of the Free State settlers. To all appeals the answer was, "Obey the laws." Mr. Governor Geary, upon whose appointment there were some hopes of an intention to mete out a better measure of justice, made haste very slowly to assume the duties of his office, notwithstanding the disorders which it was his duty to suppress were most notorious. It seemed as if he was purposely kept back until that election should give some indication of the feeling of the people. If every thing went well in Maine, then Woodson might be left to follow the course of Shannon, and the banditti permitted to pursue their ravages as territorial militia. The eighteen thousand pounder in Maine struck terror and dismay into the administration at Washington, and the echoes were forthwith heard in Kansas. Mr. Geary made all speed about that time to his government, and the St. Louis News, before he reached that point, proclaimed that there was a lull in the affairs of Kansas. Atchison, with his invading army, was probably told, "It won't do, you must go back or Buchanan will be defeated;"—while the arrest of some 130 Free State

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men on a charge of treason and murder, for attacking those who had been committing depredations upon them, may serve to satisfy even the border ruffians that their interests are well cared for in the mean time. How long the "lull" will last, remains to be seen. Whether the storm will rage again may depend upon which way the wind blows on the 4th of November.

Others of the Whigs, not being willing to go to the ———, I beg your pardon, gentlemen, — not being willing to go into infidelity in this way, have sought some other association. A convention calling itself a Whig Convention, was held a short time since in this State. That there were Whigs in it I have no doubt; but there is some evidence that it was not a Whig convention. The suppression of a reasonable discussion, and by unearthly noises, is neither Whig principle nor Whig practice. But let that pass. You doubtless looked with solicitude for the views of the convention upon the great question of the canvass, — the only question of practical importance. The presiding officer, professing to give a somewhat full and formal expression of opinion in relation to the momentous issues now before the people of the United States, says of Kansas, —

"I cannot forget, moreover, that there are diseases in the political, as well as in the physical system, for which mere local applications and mere topical treatment are utterly insufficient and often injurious, and where the only hope of a radical cure is in purifying and invigorating and building up anew the general health of the patient. Wise physicians in such cases prescribe what I believe they call an *alterative* medicine. And this deplorable Kansas malady will, in my opinion, prove to be precisely one of this class of disorders. It demands an *alterative;* and those who rely so much upon direct applications for the relief of the superficial symptoms, distressing as they are, will find themselves, I fear, grievously disappointed."

It appears to me that the symptoms have not been very

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superficial. We all agree that an alterative is necessary; but what is to be the particular medicine? Pills of lead and powders of gunpowder are very powerful alteratives, but they do not generally improve the condition of the patient.

There is some significance in the inquiry afterwards made by the presiding officer in the course of his speech. What had a Republican House of Representatives "accomplished for suffering, bleeding Kansas?" (Not very superficial!) Adding, "does any man here doubt that if men of less extreme and extravagant views, men more conciliatory and practical in their purposes, had been in Congress, those odious and abhorrent Kansas laws would have been repealed before the session closed?" How this repeal might have been accomplished is not said. Men more conciliatory and practical in their purposes, might probably have obtained a repeal of some of those odious and abhorrent laws by the *compromise* of voting for Toombs's bill, which would assuredly have sealed the fate of Kansas, and made it a Slave State beyond redemption.

Another distinguished speaker, and a personal friend, said: —

"How any man can acquit the administration of President Pierce from being the source and origin of most of the disorders which are now distracting that region and spreading their exciting influence over the country, I cannot see. I admit that all the elements of trouble in that territory are not directly chargeable to the administration; but the administration was responsible, — first, for the repeal of the Missouri Compromise, and then for its course in countenancing the illegal votes from a neighboring region which put into power a legislature which had the forms of law, but which in its election and rule was an embodiment of injustice; and for giving its support to the measures of that body, which are disgraceful to humanity, disgraceful to liberty, and disgraceful to the spirit of the age. Now the duty of the administration was as plain as the light of the sun at noonday. The whole of this work should have been undone. This legislature should have

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been sent home, and the whole of their legislative action should have been annulled, as the acts of a legislature which had no right to sit."

This is good sound Whig doctrine. But see what immediately follows: —

"The difficulty about Kansas is that it is a card in the hands of politicians during the coming campaign. When the truth about Kansas is known, you will find that some of the men who have been most loud in denouncing the Kansas outrages, have been the most vigorous in preventing the measures which are calculated to give peace to that territory."

This sounds very much as if the Republicans, who have certainly been most loud in denouncing the Kansas outrages, have prevented the adoption of such measures as the speaker had just said ought to have been taken. But he will hardly assert that. The Republicans held the card, if there was a card of that sort to be played. Why did not the Administration trump that card? They held the trump, in the shape of the admission of Kansas under the Topeka constitution. That would not only have taken the card, but would have ended the game, so far as Kansas was concerned. But that was just what the slave-holding partners of the Democracy would not consent to do.

What measures have the Republican party prevented, which were calculated to give peace to Kansas? Why, they have prevented the passage of Toombs's bill; and they have most vigorously refused to compromise in such a manner that slavery will make sure of Kansas.

The presiding officer, referring to the possible success of the Democratic party, identified as it is with the overthrow of the Missouri Compromise and the unjustifiable foreign policy disclosed and avowed in the Ostend Conference, says: —

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"I can see before us no promise, and but little prospect, of either domestic or foreign peace. There is no alterative here. On the contrary, such a result presents to my mind nothing but an indefinite continuance and prolongation of that wretched state of things which has distressed the heart of every true patriot for the last six or seven months, — fears without and fightings within, the abomination of desolation standing where it ought not, fresh conflicts upon our own soil springing from the squatter sovereignty doctrines which have been so disastrously inaugurated in Kansas, and fresh panics of war with foreign powers, disturbing our trade and finances, and followed, perhaps, by the dread catastrophe itself."

But he adds: —

"If I turn, on the other hand, to a contemplation of the triumph of the Republican party, I perceive clouds and darkness, by no means less dense or threatening, resting upon the future of our domestic peace."

Now, the main purpose of the Republican party is to prevent the accomplishment by the Democratic party of what it is here said is the very "abomination of desolation." So it seems that it is just about as dangerous to prevent iniquity as it is to commit it.

The Convention resolves that the fierce and dangerous elements of discord let loose by the repeal of the Missouri Compromise, "can never be put to rest until that healing measure shall be practically reënacted, and the territory once solemnly dedicated to freedom be received into the Union as a free State." And then they cannot refrain from expressing their preference for Mr. Fillmore. That is, in other words, a recommendation to vote for him. What, and Donelson, too? Yes, and Donelson, too! You cannot scratch that ticket, because you vote for electors, who, if they vote for Fillmore, will vote for Donelson, too. Well, what kind of a Whig is Mr. Donelson, "I should very much like to know!" A Democratic slaveholder of Tennessee, on the South American

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ticket, editor of the Washington Union during Mr. Fillmore's administration, and an "uncompromising opponent of Whig men and measures, — condemning indiscriminately" all of it that was Whig. How far is Mr. Donelson likely to promote the admission of Kansas as a free State, or to oppose the acquisition of Cuba for the express purpose of adding more slave territory?

But is there any expectation on the part of the Convention, that Mr. Fillmore can be elected? Hardly. The presiding officer is "prepared, if need be, to try how it feels to vote without any State at all," although he hopes better things. Rather faint, that. But my eloquent friend is more explicit:—

"Only stand firm," he says, "only let us weather this next point, and depend upon it, we shall have smoother seas, and more favoring gales the next year. I only ask you, while you are firm, while you are zealous, to be also patient and forbearing to one another. The duty that is at this moment laid upon the Whig party is one that most tries the temper and the soul of man. It is that which calls for the exercise of the passive virtues, and they are always harder to bring out than the active virtues. It is an easy thing, when the trumpet sounds, when the air rings and burns with exhilarating shouts, when the pulse beats high, and the blood in the veins seems turned into liquid fire, — it is easy then to fling one's self into the face of the enemy, and meet victory or death. But to stand still, and have your ranks mowed down by the enemy's artillery, — to see your friends and brothers falling on each side, — to hear no word but the calm grave voice of the commander, 'Close up your ranks, boys, and show a firm front to the foe,' that is hard; but we are of the stuff that can do it."

So it appears that at a time of great excitement in the country, while there are fears without and fightings within; while the abomination of desolation stands where it ought not; while there is no promise and but little prospect of either

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foreign or domestic peace in the success of the Democratic party, which has originated all the troubles, while a great battle is to be fought between slavery and freedom, the Whig party is to denounce the Republican party, which does battle for freedom, as one upon whose success clouds and darkness rest, and to be brought into the field, standing shoulder to shoulder, — *to fire at a target.*

If this is done, it is thought that the party will live to fight another day.

"Depend upon it, Mr. President," (says the last speaker,) "the time will come when the tide of battle will turn; when 'either night or the Prussians will come,' as Wellington said at Waterloo; when along our ranks will ring, as did there, the stirring words, 'Up, Guards, and at them.'"

At whom? Why, the victorious party, whichever it may be, intrenched in the government fortifications. It would be unkind to make such a charge upon the remnant of the vanquished.

Mr. President! when that command shall speed over the hills, and echo along the valleys of New England, I doubt not that there will be a mustering of gallant riders, and an exhibition of noble horsemanship. But the roll call will show about the number of the glorious six hundred at the battle of Balaklava, — the charge will accomplish as much for the purposes of the war, — and there will be not far from the same proportion of empty saddles.

Fellow-Citizens! I may be old, but I am no fogy. If there is to be a great political battle, in which the slave power, assuming the name of Democracy, is arrayed against the personal liberty of one class of the people, and against the equal political rights of another class, I wish to enroll

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myself in the ranks and do a yeoman's service. I cannot be brought into the field in the heat of the battle, under any leaders, — to shoot at a mark.

But I have other reasons why I cannot vote for Mr. Fillmore. Mr. Fillmore in the Presidential chair was not the same Whig Mr. Fillmore who was previously a representative in Congress. And Mr. Fillmore deserting the Whig party upon its defeat in 1852, and joining a party whose distinguishing principle, be it good or bad, is not a Whig principle, — is no kind of a Whig. Moreover, Mr. Fillmore, on his return from Europe this summer, made a speech at Albany. I could not find it in one of his Boston organs the other day, where his speeches at Newburg and Rochester and other places on his route seemed to be stereotyped; but copies of it are extant, and these are extracts: —

"We see a political party, presenting candidates for the Presidency and Vice-Presidency, selected for the first time from the free States alone, with the avowed purpose of electing these candidates by suffrages of one part of the Union only, to rule over the whole United States. Can it be possible that those who are engaged in such a measure can have seriously reflected upon the consequences which must inevitably follow, in case of success? (Cheers.) Can they have the madness or the folly to believe that our Southern brethren would submit to be governed by such a Chief Magistrate?

"Suppose that the South, having a majority of the electoral votes, should declare that they would only have slave-holders for President and Vice-President, and should elect such by their exclusive suffrages to rule over us at the North? Do you think we would submit to it? No, not for a moment. (Applause.) And do you believe that your Southern brethren are less sensitive on this subject than you are, or less jealous of their rights? (Tremendous cheering.) If you do, let me tell you that you are mistaken. And, therefore, you must see that if this sectional party succeeds, it leads inevitably to the destruction of this beautiful fabric reared by our forefathers, cemented by their blood, and bequeathed to us as a priceless inheritance."

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This is a direct encouragement to insurrection, or secession by the slave-holding States, if the Republican candidate is elected; and all the more exceptionable coming from his competitor. It is not surprising that there have been divers glosses upon it, attempting to show that Mr. Fillmore did not mean what he said; but the meaning is quite plain, and if the truth were known, probably much of the violence and threats, of which we hear not a little, might be traced to it.

But suppose Mr. Fillmore had a chance of success. I do not wonder that this supposition provokes your laughter; but what is called a National Whig Convention has recently been held at Baltimore, and has indorsed, the nominations of the American party, and expressed something like a confidence in his success. I deny the authority of a portion of the Whigs to indorse the nominations of another party in the name of the Whig party. But being thus indorsed how is the election to be accomplished, and what is to be the result? The answer is clear. By defeating an election by the people, throwing it into the House of Representatives, and then standing out in the expectation that the Democratic party will give in. An election is thus to be postponed, — the whole country convulsed with the excitement which will attend it, — and the matter is to be accomplished at last by bargain and corruption, making Kansas the subject of a compromise. Compromising seems to have been considered as Mr. Fillmore's peculiar qualification in the convention at Boston. The presiding officer evidently regarded compromising with favor: —

"In my honest judgment, fellow Whigs, if these perplexing and perilous questions are ever to be settled wisely, justly, and peaceably, it will not be by the triumph of either of the principal parties to the strife."

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Another speaker is again more explicit, —

"Now Mr. Fillmore has the support of many members of the Whig party on the ground that he is a man of that moderation of temper who will reconcile the extremes of opinion on both sides. Nothing but harm can come, if this attitude of opposition and collision between the North and South is to continue. Millard Fillmore stands in the position of a man who takes that moderate part which is never tasteful to the American people. It is one of the characteristics of the people to favor extreme measures. Moderation, conciliation, and compromise — that class of qualities and that class of virtues — is not taking to the common American mind."

This is somewhat more clearly foreshadowed in the Baltimore Convention. — But what is the compromise? The question is, Shall slavery be extended into Kansas — Yes or No? If you say no, you do not compromise. If you say yes, you surrender. The election of Mr. Fillmore, then, is compromise, and compromise is surrender.

But it is objected that the Republican party is a fanatical party and a sectional party, and that it is seeking to deprive the Southern States of their rights under the constitution. Some of this was said in the speeches at the convention in Boston. More by the speakers from the free States at the Convention in Baltimore, and all of it is iterated and reiterated by the Democratic party, aided, as we have seen, by Mr. Fillmore himself. In reading the proceedings of the Baltimore Convention, I was struck with the fact that gentlemen from the slave-holding States hardly referred to the Republican as a sectional party, while those from the free States were open-mouthed in that style of denunciation. A delegate from New York "referred at some length to the duty of the South to stand by those Whigs of the North in support of Mr. Fillmore — to the necessity of the maintenance of the Union, despite the fanatical efforts of the abolitionists of the North."

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It is amusing to contrast this with a remark of Mr. Alexander Rives of Virginia, who said, "I hail from the South — my heart throbs with every emotion that can touch the heart of a Southern man. But yet I tell you that from my heart of hearts, I loathe the Northern man with Southern principles. [Applause.] Bring a man from the extreme North, and set him down in my own cherished domicil, and let him strive to outvie me in praises of the institutions of the South, and I say he ought to be kicked out of doors."

Fellow-citizens, I do not recognize the old Anti-slavery party, nor even the Freesoil party proper, in the present Republican party. With something in common with the former, and much with the latter, it is not the same. The Republican party presents, as its great distinguishing principle, the non-extension of slavery, and I propose to show that this is a sound Whig principle, and a constitutional principle, — which once might have been said to be the same thing.

To show it to be a Whig principle, I need go no farther back than the 29th of September, 1847. On that day the Whig party of Massachusetts held a convention at Springfield. Mr. Webster was present, "and addressed the meeting in his most powerful manner for nearly an hour and a half. His speech was devoted to a review of the war and its origin, and the policy of the administration with regard to it." Two or three short extracts from that speech may be found useful.

"My opposition [to the annexation of Texas] was founded on the ground that I never would, and never should, — I repeat now, I never will and never shall, — give my vote in Congress for any further annexation to this country with a slave representation. . . .

"We hear much, just now, of a panacea for the danger and evils of slavery and slave annexation, which they call the Wilmot Proviso. That sentiment is a just sentiment, but it is not a sentiment to form any new party

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upon. It is not a sentiment on which Massachusetts Whigs differ. There is not a man in this hall who holds to it any more firmly than I do, or one who adheres to it more than another. I feel some little interest in this matter, Sir. Did I not commit myself in 1837 to the whole doctrine, fully, entirely? And I must be permitted to say that I cannot quite consent that more recent discoverers should claim the merit and take out a patent. I deny the priority of their invention. Allow me to say, Sir, it is not their thunder." . . .

"We can only say, and in my judgment, Mr. President, I can only say, that we are to use the first, the last, and every occasion that offers to oppose the extension of slave power. But I speak of it here as in Congress, as a political question for statesmen to act upon. We must so regard it. I certainly do not mean to say it is less important in a moral point of view, — that it is not more important in many other points of view. But as a legislator, or in an official capacity, I must look at it, consider it, and decide it, as a matter for political action."

The platform of that convention contained a very full and emphatic annunciation of Whig principles. It was resolved, among other things,

"That the acquisition of Mexican territory, under the circumstances of the country — unless under adequate securities for the protection of human liberty — can have no other probable result than the ultimate advancement of the sectional supremacy of the slave power.

"That if the war shall be prosecuted to the final subjugation or dismemberment of Mexico, the Whigs of Massachusetts now declare, and put this declaration of their purpose on record, — that Massachusetts will never consent that Mexican territory, however acquired, shall become a part of the American Union, unless on the unalterable condition that 'there shall be neither slavery nor involuntary servitude therein, otherwise than in the punishment of crime.'

"That, in making this declaration of her purpose, Massachusetts announces no new principles of action in regard to her sister States, and makes no new application of principles already acknowledged. She merely states the great American principles embodied in our Declaration of Independence — the political equality of persons in the civil State; — the principle adopted in the Legislation of the States under the confederation, and sanctioned by

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the Constitution; in the admission of all the new States formed from the only territory belonging to the Union at the adoption of the Constitution; — it is, in short, the imperishable principle set forth in the ever memorable ordinance of 1787, which has for more than half a century been the fundamental law of human liberty in the great valley of the Lakes, the Ohio and the Mississippi, with what brilliant success, and with what unparalleled results, let the great and growing States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, answer and declare.

"And that uncompromising hostility to all wars for conquest, and to all acquisitions of territory in any manner whatever, for the diffusion and perpetuity of slavery, and for the extension and permanency of the slave power, are now — as they have been — cardinal principles in the policy of the Whigs of Massachusetts, and form, in their judgment, the broad and deep foundations on which rest, and ever must rest, the prospective hopes, and enduring interests of the whole country."

There has been no repeal of these resolutions.

With regard to Mr. Webster, who may be allowed by the Whig friends of Mr. Fillmore to have been a sound exponent of Whig principles, his opposition to the extension of slavery was distinctly expressed in a speech at Niblo's Garden in New York, in 1837; and he adhered to it throughout his whole life.

When the bill to establish a territorial government in Oregon was under consideration in August, 1848, Mr. Webster said: —

"For one, I wish to avoid all committals, all traps by way of preamble or recital; and as I do not intend to discuss this question at large, I content myself with saying, in few words, that my opposition to the further extension of local slavery in this country, or to the increase of slave representation in Congress, is general and universal. It has no reference to limits of latitude or points of the compass. I shall oppose all such extension and all such increase, in all places, at all times, under all circumstances, even against all inducements, against all supposed limitation of great interests, against all combinations — against all compromises. This is short, but I hope clear and comprehensive."

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It may be noted as a curious piece of political history, that Mr. Douglas moved an amendment to the bill, in favor of extending the Missouri Compromise to the Pacific Ocean, which was adopted by the following vote: —

YEAS — Messrs. Atchison, Badger, Bell, Benton, Berrien, Borland, Bright, Butler, Calhoun, Cameron, Davis of Mississippi, Dickinson, Douglas, Downs, Fitzgerald, Foote, Hannegan, Houston, Hunter, Johnson of Maryland, Johnson of Louisiana, Johnson of Georgia, King, Lewis, Mangum, Mason, Metcalf, Pearce, Sebastian, Spruance of Delaware, Sturgeon, Turney, and Underwood. Total, 33.

NAYS — Messrs. Allen, Atherton, Baldwin, Bradbury, Breese, Clarke, Corwin, Davis of Massachusetts, Dayton, Dix, Dodge, Felch, Green, Hale, Hamblin, Miller, Niles, Phelps, Upham, Walker, and Webster. Total, 21.

In Mr. Webster's speech "for the Constitution and the Union," March 7, 1850, there was no surrender of his opposition to the extension of slavery. While he declared that if a proposition were before Congress to establish a government for New Mexico, and it was moved to insert a provision for a prohibition of slavery, he would not vote for it, giving as a reason that "such prohibition would be idle as it respects any effect it would have upon the territory, and he would not take pains uselessly to reaffirm an ordinance of nature, nor to reënact the will of God," — he caused extracts from his speeches in 1837 and 1847 to be read as evidence of his uniform opinions, and added:

"Sir, wherever there is a substantive good to be done, wherever there is a foot of land to be prevented from becoming slave territory, I am ready to assert the principle of the exclusion of slavery. I am pledged to it from the year 1837; I have been pledged to it again and again; and I will perform those pledges; but I will not do a thing unnecessarily that wounds the feelings of others, or that does discredit to my own understanding."

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It is in the face of this declaration that it has been impudently said that the compromise measure of 1850 repealed the Missouri Compromise. One extract more, and that on his reception at Buffalo in 1851.

"I never would consent, and never have consented, that there should be one foot of slave territory beyond what the old thirteen States had at the time of the formation of the Union. Never! never!"

Mr. Clay also was opposed to the further extension of slavery. In the debates of 1850 he is reported to have said:

"I am extremely sorry to hear the senator from Mississippi say that he requires, first, the extension of the Missouri Compromise line to the Pacific, and also that he is not satisfied with that, but requires, if I understood him correctly, a positive provision for the admission of slavery south of that line. And now, sir, coming from a slave State, as I do, I owe it to myself, I owe it to truth, I owe it to the subject, to say that no earthly power could induce me to vote for a specific measure for the introduction of slavery where it had not before existed, either south or north of that line. Coming, as I do, from a slave State, it is my solemn, deliberate, and well-matured determination, that no power, no earthly power, shall compel me to vote for the positive introduction of slavery either south or north of that line.

* * * * * * * *

"But if, unhappily, we should be involved in war, between the two parts of this confederacy, in which the effort upon the one side should be to restrain the introduction of slavery into the new Territories, and upon the other side to force its introduction there, what a spectacle should we present to the astonishment of mankind, in an effort, not to propagate rights, but, I must say it, though I trust it will be understood to be said with no design to excite feeling, — a war to propagate wrongs in the Territories thus acquired from Mexico. It would be a war in which we should have no sympathies, — no good wishes; in which all mankind would be against us; in which our own history itself would be against us; for, from the commencement of the Revolution down to the present time, we have constantly reproached our British ancestors for the introduction of slavery into this country."

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These extracts show the Whig faith in relation to the extension of slavery, into which I have been baptized; and with this creed before me, I may well believe that Whigs who are willing that slavery should be farther extended, are following after strange political gods.

But the argument to show that the opposition of the Republican party to the extension of slavery is not fanatical or sectional; but that it is for the preservation, thus far, of equal rights on the part of all the people in the national representation; and that it is therefore a constitutional measure; may be extended much beyond the proof that it has heretofore had the support of the Whig party and its most eminent leaders.

The representation in the House of Representatives is politically unequal. The representation of the non-slave-holding States is based upon free population; — that of the slave-holding States upon free population, with the addition of a further representation of three fifths of their slaves; which they insist are property. The slave-holding States have *twenty-one* members, by reason of their slave representation. This is clearly not an equality of representation. If the slaves are persons, entitled to be represented as such, there is no reason for this discrimination. If they are regarded as property, there is just as much reason for a representation founded on the laboring animals which aid in performing the work upon a farm in a non-slave-holding State.

That the slave is not a person who is represented in the national government, is very obvious. He never votes. It may be answered that the women and children of the non-

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slave-holding States do not vote; which is very true. But the women rear and train those who are one day to exercise the right of suffrage, and the children are coming forward as the compeers or successors of those who do exercise it. Both classes are therefore directly interested in its exercise, and form a part of the constituency of the representative. They are represented, and free population is therefore a suitable basis on which to apportion a representation. Not so with the slave. He is not a part of the constituency. No age qualifies him, no property, if there be a property qualification, ever entitles him to any participation in the elective franchise. The nurture and training of those who are to exercise it, and which is to qualify them for its exercise, is not committed to him. Slaves may minister to the mere physical wants of those who do, and those who are to exercise this franchise, but they do not imbue their minds with free principles and high aspirations. They are in no way an element of a free government. The representation, then, so far as they are concerned, is the representation of the master; and it is founded upon property. It is not to be denied that property *may* form the basis of representation. It has been contended that as it pays the greater portion of the taxes, it furnishes a suitable and proper basis of representation, to some extent. It was so contended in the Convention to revise the Constitution of this Commonwealth in 1820. But the question returns; — viewed as property, why should three fifths of this peculiar species of property furnish a basis of representation, while all other property is entirely excluded? The solution of this question will be found in the history of the Constitution, and that of the period which immediately preceded its formation.

So far as this representation is constitutional, it has its

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existence in the second section of the first article of the Constitution, in these words, — "Representation and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." The reason why this should be the rule is certainly not apparent, but a short investigation will solve the mystery.

Bills of credit were first resorted to as a means for carrying on the war of the Revolution, but it soon became apparent that the credit of the bills must be sustained by means for their redemption. On the 26th December, 1775, Congress resolved that the thirteen Colonies be pledged for their redemption, — "that each Colony provide ways and means to sink its proportion in such manner as will be most effectual and best adapted to the condition, circumstances, and equal mode of levying taxes in each; and that the proportion or quota of each respective Colony be determined according to the number of inhabitants of all ages, including negroes and mulattoes, in each."

The Committee which reported the articles of Confederation in July, 1776, inserted a similar provision, with an exception of Indians not paying taxes. Upon this a debate arose. Mr. Chase moved that the quotas should be fixed by the number of white inhabitants. He admitted that taxation should be always in proportion to property; that this was in theory the true rule, but that from a variety of difficulties it could never be adopted in practice. He considered the number of inhabitants a tolerably good criterion of property, and

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that this might always be obtained, and was the best mode with one exception only. He observed that "negroes are property, and as such could not be distinguished from the lands or personalties held in those States where there are few slaves; that the surplus of profit which a northern farmer is able to lay by he invests in cattle, horses, &c., whereas a southern farmer lays out the same surplus in slaves; that there was no more reason, therefore, for taxing the Southern States on the farmer's head and on his slave's head, than the Northern ones on their farmers' heads and the heads of cattle; that the mode proposed would therefore tax the Southern States according to their numbers and their wealth conjunctly, while the Northern would be taxed on numbers only; *that negroes in fact should not be considered as members of the State more than cattle, and that they have no more interest in it.*"

Fellow-citizens, please bear in mind that you have here, very fully stated, the slave-holding view of the relation of slaves to the State, showing, conclusively, that they are not represented, and form no part of the basis of an apportionment of representation, unless the basis adopted be property. It does not follow, however, that they are not, as property, just subjects of taxation.

Mr. John Adams observed that the numbers of people were taken by the article as an index of the wealth of the State, and not as subjects of taxation; — that five hundred freemen produced no greater surplus for the payment of taxes than five hundred slaves; — therefore the State in which are the laborers called freemen should be taxed no more than that in which are those called slaves.

Mr. Harrison proposed, *as a compromise, that two slaves*

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should be counted as one freeman. He *affirmed that slaves did not do as much work as freemen, and doubted if two effected more than one.*

Mr. Wilson said that other kinds of property were pretty equally distributed through all the Colonies; there were as many cattle, horses, and sheep in the North as the South, and South as the North, but not so as to slaves; that experience has shown that those Colonies have been always able to pay most which have the most inhabitants, whether they be black or white; and the practice of the Southern Colonies has always been to make every farmer pay poll-taxes on his laborers, whether they be black or white. He acknowledged that freemen worked the most, but they consumed the most also, and did not produce a greater surplus for taxation. The slave was neither fed nor clothed so expensively as a freeman.

Dr. Witherspoon was of opinion that the value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation. He said the cases stated by Mr. Wilson were not parallel; that in the Southern Colonies slaves pervade the whole Colony; but they do not pervade the whole continent; and that the original resolution of Congress to proportion the quotas according to souls, was temporary only, and related to the moneys before emitted; whereas they were then entering into a new compact, and stood on original ground.

The amendment of Mr. Chase was rejected, five States for, six against it, and one divided.

The rule suggested by Dr. Witherspoon was afterwards substituted for that reported by the Committee, but the final ratification of the articles did not take place until March, 1781. In the mean time, Congress apportioned various sums

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to be raised by each State, with a proviso that the sums required should not be considered the proportion of any one State, but should be placed to their credit, and interest allowed until the quota should be finally adjusted by Congress, agreeably to the rule inserted in the articles of Confederation.

This rule was found to be impracticable. In 1778 Congress required the States to make a return of the houses and lands. New Hampshire alone complied; and in 1783 Congress adopted a new article on the subject, to be proposed to the States, providing that the quotas of the several States should be supplied "in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes in each State."

Eleven States had assented to the change at the time of the formation of the Constitution, and we have here substantially the provision which was afterwards inserted in that instrument as the basis of representation, as well as of taxation. In an address to the States, recommending the adoption of this and other articles of amendment, it was said that the only material difficulty which attended the change of the rule, in the deliberation of Congress, was to fix the proper difference between the labor and industry of free inhabitants and all other inhabitants; and that the ratio ultimately agreed on was the effect of mutual concession. The concession seems to have been in rating the value of the labor of five slaves, the same as that of three freemen; not quite two to one, according to Mr. Harrison's proposition.

The inquiry naturally arises, why three fifths of the slaves,

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which had been introduced into the basis of taxation because slaves were taken as an index of the wealth and ability of the masters to contribute and pay, should also be made the basis of a representation founded on population, when they are not represented, and have no part or lot in that matter? The answer is, that this was the result of *another compromise.*

The mode to be adopted in voting under the Confederation was the subject of great debate in Congress. The article adopted was in these words: "In determining questions in the United States in Congress assembled, each State shall have one vote." The larger States contended strenuously for a representation according to numbers.

Mr. Wilson thought that taxation should be in proportion to wealth, but that representation should accord with the number of freemen; that government is a collection of the wills of all; that if any government could speak the will of all, it would be perfect; and that so far as it departs from this, it becomes imperfect.

But the small States carried their point.

In the Convention for the formation of the Constitution, the different subjects were first discussed on resolutions; afterwards on reports of Committees to which different propositions were referred; and then upon a draft of a Constitution reported by the Committee of Detail. In this mode, and in incidental discussions when other parts of the Constitution were under consideration, the subject of representation was many times before the Convention, and in different connections. The plan of a National Government introduced by Mr. Randolph of Virginia, with the concurrence of his colleagues, asserted that the right of suffrage ought to be

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proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule might seem best in different cases. On taking it up for consideration in Committee, after propositions to amend so as to adopt the one or the other of those modes, Mr. Madison moved that an equitable ratio ought to be substituted for the equality established by the articles of Confederation; but the matter was postponed on the suggestion that the Deputies from Delaware were restrained by their commission from assenting to any change. It was feared "that the large States would crush the small ones whenever they stand in the way of their ambitious views."

It was suggested, in answer, that all the existing boundaries might be erased, and a new partition of the whole be made into thirteen equal parts.

Mr. Sherman proposed, that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants, and that in the second branch, or Senate, each State should have one vote. Dr. Franklin thought, that the numbers of representatives should bear some proportion to the represented, although he proposed proportionate supplies and an equal number of delegates from each State, the decisions to be by a majority of votes. Quotas of contribution and actual contributions of the States were proposed, and the debate was terminated at that time by the adoption in Committee of the proportion substantially as it stands at present in the Constitution; that "being the rule in the Act of Congress, agreed to by eleven States for apportioning quotas of revenue on the States." Mr. Gerry thought property not the rule of representation. Why, then, should the blacks, who were property in the South, be

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in the rule of representation more than the cattle and horses of the North? — Nine States voted in favor of it; New Jersey and Delaware in the negative.

The subject was debated at length afterwards, when the representation in the Senate; — when the proportion of the representation in the first Congress under the Constitution; — and when the periodical census were, at different times, under consideration.

Gen. Pinckney dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the government. Mr. Gouverneur Morris said property ought to have its weight, but not all the weight. If the Southern States were to supply money, the Northern States were to spill their blood. Besides, the probable revenue to be expected from the Southern States had been greatly overrated. Delegates from South Carolina insisted that blacks be included in the representation equally with the whites, and moved that three fifths be struck out. It was answered that when the rule of taxation was fixed by Congress, delegates representing slave States urged that the blacks were still more inferior to freemen. To which it was replied that the Eastern States then contended for their equality. Mr King thought the admission of the blacks along with the whites at all, would excite great discontent among the States having no slaves.

Mr. Wilson did not well see on what principle the admission of blacks in the proportion of three fifths could be explained. If admitted as citizens, why not on an equality with white citizens? If as property, why is not other property admitted? These were difficulties, however, which he thought must be overruled by the necessity of compromise.

A special Committee made a report of an apportionment,

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with a clause authorizing the legislature to regulate future apportionments according to the principle of wealth and numbers; and to this Gouverneur Morris moved a proviso, that taxation should be in proportion to representation. This was amended so as to read *direct* taxation. The debate was then continued upon the representation. Mr. Davie saw, that it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure North Carolina would not confederate on any terms that did not rate them at least as three fifths. Dr. Johnson was for including blacks equally with the whites in the computation. Gouverneur Mŏrris believed Pennsylvania would never agree upon a representation of negroes. Mr. Pinckney moved an amendment so as to make blacks equal to whites in the ratio. He said they were as productive of pecuniary resources as the laborers of the Northern States: and it would be *politic with regard to the Northern States, as taxation is to keep pace with representation.* The taxation clause was then incorporated into the clause respecting representation. Mr. Pinckney's motion for equality was rejected, two to eight, and the whole proposition adopted, six to two, Massachusetts and South Carolina divided.

The debate was continued upon the proposition for an equality of votes in the Senate. Mr. Madison said: "It seemed to be now pretty well understood that the real difference of interests lay not between the large and the small, but between the Northern and Southern States. The institution of slavery and its consequences formed the line of discrimination."

The Committee of Detail having reported a draft of the proposed Constitution, with a provision that no duties should be laid on exports, nor on the migration or importation of

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such persons as the several States might think proper to admit, nor prohibit such importations; the opposition to the slave representation was renewed. When the clause respecting representation was considered, Mr. King said he never could agree to let slaves be imported without limitation, and then be represented in the national legislature. Either slaves should not be represented, or exports should be taxable. Mr. Gouverneur Morris moved to insert the word "free" before the word "inhabitants." Much, he said, would depend on this point. He denounced slavery as a nefarious institution, and the slave-trade as a defiance of the most sacred laws of humanity; and he inquired, "What is the proposed compensation to the Northern States for a sacrifice of every principle of right, every impulse of humanity?" "Let it not be said," he remarked, "that direct taxation is to be proportioned to representation. It is idle to suppose that the General Government can stretch its hand directly into the pockets of the people scattered over so vast a country. They can only do it through the medium of exports, imports, and excises."

Mr. Dayton seconded the motion.

Mr. Sherman "did not regard the admission of negroes as liable to such insuperable objection. It was *the freemen of the Southern States who were to be represented, according to the taxes paid by them, and the negroes* are *only included in the estimate of the taxes.*"

Mr. Wilson thought the motion premature. An agreement to the clause under consideration would be no bar to the object of it; and it was rejected, New Jersey alone voting for it.

Subsequently, Mr. Dickinson moved to limit the number of representatives to be allowed to the large States. Unless this were done, the small States would be reduced to entire

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insignificance, and encouragement given to the importation of slaves. And when the clause of the draft providing that no duties should be laid on the importation of slaves, nor the importation prohibited, came up, the increase of the inequality in the representation by means of the slave-trade, if the three fifths clause was allowed, was not overlooked. Mr. Luther Martin (of Maryland) proposed to allow a prohibition or tax on the importation of slaves. "In the first place," he said, "as five slaves are to be counted as three freemen in the apportionment of representation, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution."

Delegates from North Carolina, South Carolina, and Georgia insisted, that those States would never agree to the plan unless their right to import slaves was untouched. Some of them intimated that if they were let alone, they would probably of themselves stop importations. Mr. Rutledge said, if the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become carriers.

The subject was referred to a committee, which reported a clause restraining any prohibition of migration or importation prior to 1800, and that a tax or duty might be imposed upon such migration or importation, at a rate not exceeding the average of the duties laid on imports. Upon motion of General Pinckney, opposed by Mr. Madison, the first part of the report was amended so as to extend the term to 1808;

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and the second part of it was then amended so that the tax or duty should not exceed ten dollars. Mr. Sherman was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves. Mr. King and Mr. Langdon considered this as the price of the first part, and General Pinckney admitted that it was so. Virginia was decidedly in favor of an immediate restriction.

I have thus presented an extended, and yet very limited, sketch of the debates and proceedings, that you may see how the slave-holding States relieved themselves, in the Congress of the Confederation, from taxation, (or what was in the nature of taxation,) on account of their slaves, by transferring the basis from population to that of real estate; and how, when the latter basis failed, by reason of a neglect to make returns, and there was a report of a committee in favor substantially of the former basis, — by proposing that two slaves should be counted as one freeman, and alleging that the labor of slaves was not of as much value as that of freemen by about that ratio, they succeeded in reducing the slave portion of the basis of taxation to three fifths, by a compromise; — how, in the Convention which formed the Constitution, by insisting that there should be a representation on account of slaves, because wealth or property was a proper subject of representation, and alleging that the labor of a slave was of the value or nearly the value of that of a freeman, they succeeded in obtaining a representation on three fifths of their slaves, by another compromise, upon which, direct taxation and representation were to go together, the taxation being the equivalent or consideration, mainly, which was to satisfy the non-slave-holding States for the inequality; and how, afterwards, by insisting on an unre-

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stricted right to import slaves, threatening something like secession or disunion if that demand was not acceded to, they obtained a provision prohibiting restriction for twenty years, subject to a duty, by another compromise.

The slave-holding portion of the basis of representation was evidently very distasteful to some of the members, even sugar-coated as it was by taxation on the same basis; and it was undoubtedly rendered somewhat more palatable by the insertion of the provision by which Congress might prohibit the importation of slaves after 1808, and thus far restrain the extension of the inequality, while at the same time it prevented a further "defiance of the most sacred laws of humanity."

In the Convention of Massachusetts for the ratification of the Constitution, Mr. King, explaining the section respecting representation, is reported to have said, "It is a principle of this Constitution that representation and taxation should go hand in hand. This paragraph states that the number of free persons, including those bound to service for a term of years, and including Indians not taxed, three fifths of all other persons. These persons are the slaves. By this rule are representation and taxation to be apportioned. And it was adopted because it was the language of all America." And to make the idea of taxation by numbers more intelligible, he said, "five negro children of South Carolina are to pay as much tax as the three governors of New Hampshire, Massachusetts, and Connecticut." Another member (Mr. Nasson) wished "the honorable gentleman had considered this question on the other side, as it would then appear that this State will pay as great a tax for three children in the cradle, as any of the Southern States will for five hearty working negro men."

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In answer to a suggestion that Congress may draw their revenue wholly by direct taxes, it was said, "They cannot be induced to do so; it is easier for them to have resort to the impost and excise; but it will not do to overburden the impost, because that would promote smuggling, and be dangerous to the revenue; therefore Congress should have the power of applying, in extraordinary cases, to direct taxation."

One of the speakers in the Convention at Boston, is reported to have said: —

"There is another matter concerning which we hear a great deal in these days of excitement, — and, allow me to say, a great deal which, in my judgment, is mischievous. Men who have accustomed themselves to speak without reverence to the Constitution of their country, which no man who is fit for a Republican can, are constantly attempting to make us believe that the provision of the Constitution which determines the representation in the House of Representatives, is a grant of enhanced power to the slave States over that which is accorded in the council of the nation to the free States. And those repeated attempts are not always in vain, and there are many good men and true who really believe it. Now, what is the provision concerning which all this hue and cry is made, and on account of the existence of which these designing men are endeavoring to make us believe that the Constitution has established an oligarchy in the South? Here it is:

"'Representatives and direct taxes shall be apportioned among the several States which may be included within the Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.'

"This is the whole provision, and many men having this alone presented to them, think that the addition to the enumeration of three fifths of the slaves, is a grant of increased power to the slave State. But he who will examine the whole of the Constitution, in all those parts which have reference to representation from the several States, will see that, instead of being a grant, it is a limitation of power.

"Strike this 'obnoxious' provision out, and see what would be the effect of that insane proceeding. The immediate and the only effect would be,

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that the slave States would be entitled to and would have more representatives than they now have, while the free States would have less than they now have. Is that what these philanthropic gentlemen want?

"The Constitution provides, — and I suppose that we shall all agree that it ought to provide, — that representation should be based upon population. Strike out the 'oligarchical provision,' as I have heard it called, and the enumeration in the slave States would include not only three fifths, but the whole of the slave population.'

On reading this, I was very much at a loss to understand wherein the misrepresentation consisted, and how, if the provision cited were struck out, the Constitution would provide that representation should be based upon population. A friend suggested that the meaning must be, that if that part of the provision which gives the representation for three fifths of the slaves, which is the "obnoxious" or "oligarchical provision," were struck out, such would be the result. But that would not give a representation upon the whole number of slaves, for in that case the numbers upon which the representation is to be apportioned, would be determined by the whole number of free persons, including those bound to service, and excluding Indians not taxed. If the whole clause respecting the mode in which the numbers are to be determined was struck out, the Constitution would be a different thing from what it is, — which would be true, in fact, if you strike out the whole, or any substantial part, of the provision. What it would have been, if not what it is, no one can say. It is very clear, however, from the debates, that it would not have contained a clause by which the whole number of slaves would be included in the ratio of representation. The position, therefore, that an increased representation, and an unequal representation, is granted to the slave States, seems not to be impeached by this argument.

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I need not say to you that, under this provision of the Constitution, taxation and representation have not gone "hand in hand," — no substantial equivalent having been received for the inequality of the representation. The clause, so far as respects representation, has been always active and operative, and the inequality is constantly increasing; but as it regards taxation it has been almost a dead letter, quite so for more than a third of a century, there having been no direct taxation during that time.

Whether the basis be regarded as one founded upon population, or property, there is an inequality which is contrary to the spirit of our free institutions.

The inequality exists also in the election of President and Vice-President. At the coming election, the slave-holding States will have twenty-one electoral votes, by reason of their slave population; the Constitution providing that "each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress." But for this unequal vote, Mr. Buchanan's chance would be the mere shadow of a shade.

But this inequality is not a subject of complaint, with any view to redress or change. The people of the non-slave-holding States ratified the Constitution, with these provisions as parts of it. If they made a bad compromise, it is no more than they have done in other instances. Let it stand. Let those entitled have the benefit of it; but it is proper that these matters should be brought into view, when the account of the wrongs and injustice done to the slave-holding States is audited for the purpose of ascertaining the balance. There is no design on the part of the Republican party, so far as I

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am aware, to attempt an escape from the due operation of these constitutional provisions.

But the inquiry arises, What is the extent and limit of this constitutional provision authorizing a representation based upon three fifths of the slave population? This is a question upon which I proceed to speak, and but for which I should not be here.

The question is, whether all the States now in the Union, and those which may be admitted hereafter, are entitled by this constitutional provision to a representation based upon three fifths of their slaves? or whether, in its legitimate operation, it is confined to States formed out of territory embraced within the limits of the United States at the time the Constitution was adopted? If the latter, then two of the twenty-one representatives from the slave-holding States, who have their seats upon that part of the basis, are not there in pursuance of the Constitution, but upon some other foundation; and any other States which may hereafter be formed from the territory acquired or annexed since the adoption of the Constitution, will not be entitled to this unequal representation, even if they are slave States. If this be true, two electoral votes, which will probably be cast in the pending election, (one in Louisiana, derived entirely from her slave population, and one in Missouri, derived from her slave population, and a fraction of the free population too small to have given her a representative, but for the aid of the slave basis,) will be cast by reason of the unequal and wrongful representation from those States; and will be, therefore, of themselves, so far as they may affect the election, a political injustice. And if all this be so, then the Republican oppo-

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sition to the extension of slavery, as the most effectual way of preventing further injustice, which it may not be easy to escape if the extension is permitted, is neither sectional nor fanatical, but is founded upon the Constitution itself.

There is something in the history of the debates upon the Constitution, which might tend to show that this provision might have been confined to those States which were in existence when the Constitution was formed, through a power to annex a condition to the admission of any new slave State by which it should be entitled to representation upon its free population alone. A provision reported by the Committee of Detail, in connection with the clause authorizing the admission of new States, in these words, "If the admission be consented to, the new State shall be admitted on the same terms with the original States," was struck out by nine votes to two, for the reason expressed, that circumstances might arise which would render it inconvenient to admit new States on terms of equality, and that the legislature should be left free.

It is not necessary, however, that I should now rely upon that, in order to sustain my position. I am willing to concede, for the sake of the argument, that this provision respecting representation embraces all States which might lawfully be included in the Union, in pursuance of the provisions of the Constitution, as understood by the framers of it, and construed by those best qualified to determine its scope and meaning; and more than this cannot be required. It would be subversive of the first principles of law to extend the compromise respecting representation beyond the constitutional limits for the admission of States into the Union. For instance, suppose the Constitution had provided that the States mentioned in it, with Vermont and the five States to

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be formed north-west of the Ohio, might be included in the Union, but that no State should be divided, and that no other State should be admitted; then the provision respecting representation would regulate the proportion of all the States which might thus be included, but could not lawfully and fairly be construed to extend farther. And if, contrary to the supposed provision respecting the admission of States, a foreign State should be admitted into the Union by a major vote of Congress, or by treaty, or in any other way except an amendment of the Constitution, the State so admitted would not be within the constitutional provision respecting representation, but must depend for her representation in the national councils upon some other authority than the Constitution.

We come, then, to the question, What States might be admitted into the Union, as formed by the Constitution, under and according to the provisions of that instrument?

Although Rhode Island refused to send delegates to the Convention, the Constitution made provision for her as if she had been represented. The original thirteen States, therefore, were entitled to membership, and the ratification of nine of them was sufficient for its establishment among the States so ratifying. The third section of the fourth article is in these words: —

"New States may be admitted by the Congress into the Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress."

It may be said that this language is broad enough to include the admission of all the globe; but it is quite clear that

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such could not have been the intent of those who framed or of those who adopted it; and the well-settled rule of construction, applicable to organic as well as other laws, is, that in determining the meaning, the context, subject-matter, spirit, and reason of the law, are to be taken into consideration. New States may be admitted. What new States? We understand from other parts of the Constitution, that a State, to be admitted, must have a republican form of government. Here is one qualification of the general terms not contained in the section itself. If we turn to the introductory clause or preamble of the Constitution, we find not only by whom, but for what purposes, the Constitution was framed. "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." This looks very much like another qualification. The United States then existed as a nation, with limits defined by the treaty of peace. It was not established to form a more perfect union with the inhabitants of Great Britain, or those of any other foreign State and their posterity; and if not, the provision for admission is not broad enough to embrace them. All those for whom it was framed may be included. Those for whom it was not framed are not within the clause of admission. The argument, however, does not rest on that alone. Fortunately the means for determining this question are accessible; but the inquiry may embrace a few facts in the previous history of the country. When the colonial charters were granted, the knowledge of the geography of this country was very limited, and perhaps there were other reasons for the extent of some

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of the grants. Connecticut, Carolina, and Georgia extended west to the South Sea, and Virginia extended from sea to sea west and north-west. Upon the Declaration of Independence, the new States claimed according to the colonial charters. The treaty of peace was made with "the United States" in 1783, and specified their boundaries, the westerly line being the middle of the Mississippi; and of course the limits of the States on that side were defined by that boundary. Nearly all the country west of the mountains was at that time a wilderness, and the land in possession of the Indians, but the several States claimed the portion of it which was within their charter limits. Other States having no vacant lands, insisted that these uninhabited lands, having been acquired by the common means and common expenditure of blood and treasure, ought to belong to all, and be applied to the discharge of the debt incurred by the war. Maryland declined to ratify the Articles of Confederation for a long period, the principal reason being that the lands were not thus appropriated. In 1780, New York passed an act which was completed in March, 1781, by a formal instrument executed by her delegates in Congress, defining her limits, and ceding to the use and benefit of such States as should become parties to the Confederation, all her claims northward and westward of those limits.

In 1783, Virginia authorized a conveyance to the United States in Congress assembled of all her right to the territory northwest of the Ohio, which was perfected in 1784, by a transfer of all her right, title, and claim, as well of soil as of jurisdiction. With the exception of certain lands reserved, this cession was to the same uses as that of New York. The act contained a condition that the territory so ceded should be formed into States containing a suitable extent of terri-

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tory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed shall be distinct republican States, and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence as the other States."

In 1785, Massachusetts made a cession of certain of her claims. And in 1786, Connecticut did likewise.

At the time of the formation of the Constitution, Vermont was desirous of admission into the Union, which was opposed by New York, on account of her claim to the territory claimed by Vermont.

As early as 1782 a petition from Kentucky asserted the right of Congress to create new States, and prayed that the power might be asserted in their behalf; and some measures had been taken by Virginia with a view to the erection of a separate State west of the mountains.

There had been a petition likewise from inhabitants of Western Pennsylvania, complaining of grievances, and praying that Congress would give a sanction to their independence, and admit them into the Union.

The people of the District of Maine had contemplated a separate government; and the erection of another in Western North Carolina was foreseen.

It was under these circumstances that the question came up in the Convention, what provision should be made in the Constitution relative to the admission of new States.

The 10th article of the plan proposed by Mr. Randolph was a resolution, "that provision ought to be made for the admission of States *lawfully arising within the limits of the United States*, whether from a voluntary junction of territory

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or otherwise, with the consent of a number of voices in the National Legislature less than the whole."

This resolution was agreed to, and was afterwards incorporated into a report of a Committee on Resolutions. The report, with this resolution in the same words, was afterwards referred to the Committee of Detail.

Thus far this matter had formed the subject of little or no debate.

In the course of the discussions upon representation, " Mr. Gerry wished before the question should be put that the attention of the House might be turned to the dangers apprehended from Western States. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the Western country. To guard against these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner that they should never be able to outnumber the Atlantic States." He accordingly moved, "that in order to secure the liberties of the States already confederated, the number of Representatives in the first branch, of the States which shall hereafter be established, shall never exceed in number the Representatives from such of the States as shall accede to this Confederation."

Mr. King seconded the motion. Mr. Sherman thought there was no probability that the number of future States would exceed that of the existing States. If the event should ever happen, it was too remote to be taken into consideration at that time. Besides, we are providing for our posterity, for our children and our grandchildren, who would

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be as likely to be citizens of new Western States as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion."

In the Report of the Committee of Detail, the plan as matured at that time was introduced in these words, namely: — "We the people of the States of New Hampshire, Massachusetts, &c. (reciting the names of the thirteen States) do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity."

The 17th article of the plan was: — "New States, lawfully constituted or established *within the limits of the United States*, may be admitted by the legislature into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the legislatures of such States shall also be necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the legislature may make conditions with the new States concerning the public debt which shall then be subsisting."

When this article was taken up for consideration, a long debate arose, and divers amendments were proposed.

Mr. Gouverneur Morris moved to strike out the last two sentences, namely: — "*If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the legislature may make conditions with the new States concerning the public debt which shall be then subsisting.*" He did not wish to bind down the legislature to admit Western States on the terms here stated.

Mr. Madison opposed the motion, insisting that the Western States neither would nor ought to submit to a union

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which degraded them from an equal rank with the other States.

Col. Mason. If it were possible by just means to prevent emigration to *the Western country*, it might be good policy; but go the people will, as they find it for their interest; and the best policy is to treat them with that equality which will make them friends and not enemies.

Mr. Gouverneur Morris did not mean to discourage the growth of the Western country. He knew that to be impossible. He did not wish, however, to throw power into their hands.

Mr. Sherman was for fixing an equality of privileges.

Mr. Langdon was in favor of the motion. He did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.

Mr. Williamson was for leaving the legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On Mr. Gouverneur Morris's motion for striking out, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, and Georgia aye, — nine; Maryland and Virginia no, — two.

After Mr. Morris's amendment striking out the provision for equality had prevailed, he moved as a substitute for the residue of the article, " New States may be admitted by the legislature into the Union; but no new State shall be erected within the limits of any of the present States, without the consent of the legislature of such State, as well as the general legislature." The first part to " Union," was agreed to *nem. con.* Mr. L. Martin opposed the latter part. " Nothing," he said, " would so alarm the limited States, as to make the

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consent of the larger States, claiming the Western lands, necessary to the establishment of new States within their limits." The motion was agreed to, six to five. The article coming before the House as amended, Mr. Sherman thought it unnecessary. The Union could not dismember a State without its consent.

Dr. Johnson suggested, that as the clause stood, Vermont would be subjected to New York, contrary to the faith pledged by Congress.

Mr. Sherman moved to postpone, to take up this amendment, and moved as an amendment, " The legislature shall have power to admit other States into the Union; and new States to be formed by the division or junction of States now in the Union, with the consent of the legislature of such States." Mr. Madison adds, [" *The first part was meant for Vermont, to secure its admission,*"] which shows clearly that the general language used did not refer to foreign territory; as is shown in fact by the whole of the debate.

Mr. Gouverneur Morris's substitute, after being amended, was agreed to, 8 to 3, — New Jersey, Delaware, Maryland in the negative.

An amendment by Mr. Dickinson was adopted without count, and the article was thus framed substantially as it now stands in Art. IV. sect. 3 of the Constitution, " Congress " being substituted for " legislature," with some change in the arrangement of the sentence.

In all this long debate, and among the various propositions to amend, I find nothing indicating a supposition on the part of any member, that provision was to be made for the admission of a State formed from territory not then within the limits of the United States. The general clause providing that new States may be admitted into the Union, passed, as

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we have seen, without dissent, which it could not have done had there been a supposition that it contemplated the possibility of the addition of foreign territory. That was intended to provide for the admission of Vermont, and perhaps to cover the admission of the States to be formed from the territory northwest of the Ohio, although it would seem to have been understood that the ordinance adopted by Congress July 13, 1787, (about six weeks prior to these proceedings in the Convention,) had settled the affairs of that territory by a fundamental law and compact, so that no provision in the Constitution was necessary in reference to that territory. The residue of the article related to cases of new States to be formed from the territory of the existing States, by division, and perhaps by the junction of parts of States, — a main part of the controversy being, whether Congress should have power to do this without the consent of the States to be affected. No mention was made of Canada, for whose admission into the Confederation provision was made in the Articles of Confederation. It was quite proper to give her an opportunity to join in the Revolution. As she had not done so, the Constitution was not made for her.

It appears that the provision for the admission of new States, extended only to the territory then embraced in the United States; not only from the preamble, but because it was framed with reference to the existing state of things; because all its language is satisfied without extending it to foreign territory; because it would have been regarded as indecorous, if not hostile, toward Great Britain and Spain, had provision been made for a contingent admission, founded on anticipated dismemberments of their territory; because Canada, for the admission of which provision was made in the Articles of Confederation, is left out; because the debates

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show conclusively that no foreign territory was within the contemplation of the Convention, — and it is believed that no suggestion of a construction which would include such territory, is to be found in the debates in the State conventions; and because any provision for admitting foreign territory would have been fatal to the Constitution. No one conversant with the history of the Constitution can doubt it. The jealousy of the Western States which were to be admitted shows this.

But this is not all upon this point. The construction of the Constitution nearest to a contemporaneous one, clearly held the provision not to extend to foreign territory.

Upon the adoption of the Constitution, the settlement of the Western country was more rapid, and the importance of the navigation of the Mississippi became more and more apparent.

An arrangement was had with Spain respecting the navigation through her territory, and for a deposit of merchandise at New Orleans.

Difficulties, and jealousy, and excitement arose, and there was a proclamation by the Intendant at New Orleans, that the right of deposit no longer existed; whether with or without the direction of his government is now immaterial.

Spain about that time ceded Louisiana to France by the treaty of St. Ildefonso, and a negotiation was opened with France for the purchase of the Island of Orleans and the territory eastward.

Mr. Madison, then Secretary of State, sent to Mr. Livingston, our minister to France, the project of a treaty, the 7th article of which is as follows: —

"Art. 7. To incorporate the inhabitants of the hereby ceded territory

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with the citizens of the United States on an equal footing, being a provision which cannot now be made, it is to be expected from the character and policy of the United States that such incorporation will take place without unnecessary delay. In the mean time they shall be secure in their persons and property, and in the enjoyment of their religion."

While this matter was under consideration, the danger of a war between France and England became imminent; and Bonaparte, probably convinced that he could not hold Louisiana if war was declared, proposed to sell the whole of it, and no less.

Mr. Livingston, and Mr. Monroe who joined him about that time, were not authorized to make such a purchase. But the matter admitted of no delay; an answer to the proposition must be given forthwith; and they took the responsibility, and negotiated a treaty, April 30, 1803, for the purchase, which contained this as its third article, namely: —

"Art. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The article, it is perceived, is somewhat more definite than that contained in Mr. Madison's draft of a treaty for the smaller cession. It is not, perhaps, to be inferred with certainty from the article prepared by Mr. Madison, that he entertained a decided opinion that Louisiana could not be admitted into the Union as a State without an amendment of the Constitution; but upon the conclusion of the treaty, Mr. Jefferson's opinion to that effect was distinctly ex-

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pressed. In a letter to Wilson C. Nicholas, Sept. 7, 1803, he said: —

"Whatever Congress shall think it necessary to do, should be done with as little debate as possible, and particularly so far as respects the constitutional difficulty. I am aware of the force of the observations you make on the power given by the Constitution to Congress, to admit new States into the Union, without restraining the subject to the territory then constituting the United States. But when I consider that the limits of the United States are precisely fixed by the treaty of 1783, that the Constitution expressly declares itself to be made for the United States, I cannot help believing the intention was not to permit Congress to admit into the Union new States, which should be formed out of the territory for which, and under whose authority alone, they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, &c. into it, which would be the case on your construction. When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction. I say the same as to the opinion of those who consider the grant of the treaty-making power as boundless. If it is, then we have no Constitution. If it has bounds, they can be no others than the definitions of the powers which that instrument gives. It specifies and delineates the operations permitted to the federal government, and gives all the powers necessary to carry these into execution. . . . . I confess, then, I think it important, in the present case, to set an example against broad construction, by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction; confiding, that the good sense of our country will correct the evil of construction when it shall produce ill effects."

Other letters written by him are to the same effect.

The treaty was ratified by the Senate, at a special session of Congress, Oct. 20, 1803. The ratification was in executive session, and I have found no sketch of the debate. The

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subject came before the Senate soon after, on a bill to authorize a creation of stock, for the purpose of carrying the treaty into effect. A few extracts from that debate will show the opinion upon this subject.

Mr. Pickering said: —

"Neither the President and Senate, nor the President and Congress, are competent to such an act of incorporation. He believed that our administration admitted that this incorporation could not be effected without an amendment of the Constitution; and he conceived that this necessary amendment could not be made in the ordinary mode by the concurrence of two thirds of both Houses of Congress, and the ratification by the legislatures of three fourths of the several States. He believed the assent of each individual State to be necessary for the admission of a foreign country as an associate in the Union; in like manner as in a commercial house, the consent of each member would be necessary to admit a new partner into the company; and whether the assent of every State to such an indispensable amendment were attainable, was uncertain."

Mr. Tracy: —

"Congress have no power to admit new foreign States into the Union, without the consent of the old partners. The article of the Constitution, if any person will take the trouble to examine it, refers to domestic States only, and not at all to foreign States; and it is unreasonable to suppose that Congress should, by a majority only, admit new foreign States, and swallow up, by it, the old partners, when two thirds of all the members are made requisite for the least alteration in the Constitution. The words of the Constitution are completely satisfied, by a construction which shall include only the admission of domestic States, who were all parties to the Revolutionary war, and to the compact; and the spirit of the association seems to embrace no other. . . . .

"But it is said, that this third article of the treaty only promises an introduction of the inhabitants of Louisiana into this Union, as soon as the principles of the federal government will admit; and that, if it is unconstitutional, it is void; and, in that case, we ought to carry into effect the constitutional part. . . . .

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"I shall be asked, sir, what can be done? To this question I have two answers; one is, that nothing unconstitutional can or ought to be done; and if it be ever so desirable that we acquire foreign States, and the navigation of the Mississippi, &c., no excuse can be formed for violating the Constitution; and if all those desirable effects cannot take place without violating it, they must be given up. But another and more satisfactory answer can be given. I have no doubt but we can obtain territory either by conquest or compact, and hold it, even all Louisiana, and a thousand times more if you please, without violating the Constitution. We can hold territory; but to admit the inhabitants into the Union, to make citizens of them, and States, by treaty, we cannot constitutionally do; and no subsequent act of legislation, or even ordinary amendment to our Constitution, can legalize such measures. If done at all, they must be done by universal consent of all the States or partners to our political association. And this universal consent, I am positive, can never be obtained to such a pernicious measure as the admission of Louisiana, of a world, and such a world, into our Union. This would be absorbing the Northern States, and rendering them as insignificant in the Union as they ought to be, if, by their own consent, the measure should be adopted."

Mr. John Quincy Adams: —

"For my own part, I am free to confess that the third article, and more especially the seventh, contain engagements placing us in a dilemma, from which I see no possible mode of extricating ourselves but by an amendment, or rather an addition to the Constitution. The gentleman from Connecticut (Mr. Tracy), both on a former occasion, and in this day's debate, appears to me to have shown this to demonstration. But what is this more than saying that the President and Senate have bound the nation to engagements which require the coöperation of more extensive powers than theirs, to carry them into execution? Nothing is more common in the negotiations between nation and nation, than for a minister to agree to and sign articles beyond the extent of his powers. This is what your ministers, in the very case before you, have confessedly done. It is well known that their powers did not authorize them to conclude this treaty; but they acted for the benefit of their country; and this House, by a large majority, has advised to the ratification of their proceedings."

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Mr. Taylor, of North Carolina, who was in favor of the treaty, said: —

"The territory is ceded by the first article of the treaty. It will no longer be denied that the United States may constitutionally acquire territory. The third article declares that 'the inhabitants of the ceded territory shall be incorporated in the Union of the United States.' And these words are said to require the territory to be erected into a State. This they do not express, and the words are literally satisfied by incorporating them into the Union as a territory, and not as a State. The Constitution recognizes, and the practice warrants, an incorporation of a territory and its inhabitants into the Union, without admitting either as a State."

Mr. Breckenridge, of Kentucky, who also supported the treaty: —

"But if gentlemen are not satisfied with any of the expositions which have been given of the third article of the treaty, is there not one way, at least, by which this territory can be held? Cannot the Constitution be so amended, (if it should be necessary,) as to embrace this territory? If the authority to acquire foreign territory be not included in the treaty-making power, it remains with the people; and in that way all the doubts and difficulties of gentlemen may be completely removed; and that, too, without affording France the smallest ground of exception to the literal execution on our part of that article of the treaty."

Mr. Wilson C. Nicholas, of Virginia, to whom the letter of Mr. Jefferson was addressed, did not venture, against the opinion there expressed, to contend that Louisiana could be admitted as a State, without an amendment of the Constitution. He said: —

"If, as some gentlemen suppose, Congress possesses this power, they are free to exercise it in the manner that they may think most conducive to the public good. If it can only be done by an amendment to the Constitution, it is a matter of discretion with the States whether they will do it or not;

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for it cannot be done 'according to the principles of the federal Constitution,' if the Congress or the States are deprived of that discretion which is given to the first, and secured to the last by the Constitution. In the third section of the fourth article of the Constitution, it is said, 'new States may be admitted by the Congress into this Union.' If Congress have the power, it is derived from this source; for there are no other words in the Constitution that can, by any construction that can be given to them, be considered as conveying this power. If Congress have not this power, the constitutional mode would be by an amendment to the Constitution."

The treaty had been the subject of a debate in the House, a few days before. The constitutional right to acquire territory by purchase, was more strenuously questioned in the House than in the Senate. The right to admit territory, if acquired, was also denied.

Mr. Griswold, of New York, said:—

"It was not consistent with the spirit of the Constitution that territory other than that attached to the United States at the time of the adoption of the Constitution should be admitted; because at that time the persons who formed the Constitution of the United States had a particular respect to the then subsisting territory. They carried their ideas to the time when there might be an extended population; but they did not carry them forward to the time when addition might be made to the Union of a territory equal to the whole United States, which additional territory might overbalance the existing territory, and thereby the rights of the present citizens of the United States be swallowed up and lost. Such a measure could not be consistent either with the spirit or the genius of the government."

Mr. Griswold, of Connecticut:—

"The government of the United States was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing those blessings to ourselves and our posterity. It follows from these principles that no power can reside in any

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public functionary to contract any engagement, or to pursue any measure, which shall change the Union of the States. . . . .

"A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies, and be governed accordingly. The objection to the third article is not that the province of Louisiana could not have been purchased, but that neither this nor any other foreign nation can be incorporated into the Union by treaty or by law; and as this country has been ceded to the United States only under the condition of an incorporation, it results that, if the condition is unconstitutional or impossible, the cession itself falls to the ground."

On the other hand, Mr. Smilie, of Pennsylvania, after citing the article, added: —

"Now, where is the difficulty? We are obliged to admit the inhabitants according to the principles of the Constitution. Suppose those principles forbid their admission; then we are not obliged to admit them. This followed as an absolute consequence from the premises. There existed, however, a remedy for this case, if it should occur: for, if the prevailing opinion shall be, that the inhabitants of the ceded territory cannot be admitted under the Constitution as it now stands, the people of the United States can, if they see fit, apply a remedy, by amending the Constitution so as to authorize their admission. And if they do not choose to do this, the inhabitants may remain in a colonial state."

Mr. Nicholson, of Maryland: —

"Whether the United States, as a sovereign and independent empire, had a right to acquire territory, was one question, but whether they could admit that territory into the Union, upon an equal footing with the other States, was a question of a very different nature. Upon this latter point, he meant to offer no opinion, because he did not consider it before the House. When the subject should come properly into discussion, he should have no objection not only to enter at large into the constitutional authority to admit the newly acquired territory into the Union as a State, but likewise to inquire whether this was really the spirit and intention of the third article of the treaty? The question now before the committee was, Is it expedient to carry this treaty into effect?

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Mr. Rodney, of Delaware: —

"How are these people to be admitted? According to the principles of the federal Constitution. Is it an open violation of any part of the Constitution? No. An express reservation is made by those who formed the treaty, that they must be admitted under the Constitution. Now, if admitted agreeably to the Constitution, it cannot be said to be in violation of it, and if not in violation of it, the fears of gentlemen are groundless."

Mr. John Randolph: —

"A stipulation to incorporate the ceded country does not imply that we are bound ever to admit them to the unqualified enjoyment of the privileges of citizenship. It is a covenant to incorporate them into our Union — not on the footing of the original States, or of States created under the Constitution — but to extend to them, according to the principles of the Constitution, the rights and immunities of citizens, being those rights and immunities of jury trial, liberty of conscience, &c., which every citizen may challenge, whether he be a citizen of an individual State, or of a territory subordinate to and dependent on those States in their corporate capacity. In the mean time they are to be protected in the enjoyment of their existing rights. There is no stipulation, however, that they shall ever be formed into one or more States."

I have thus cited that part of the debates upon this subject in the Senate and House which bears directly upon this question, for the purpose of showing, that while the right to admit a State formed out of foreign territory was emphatically denied, no one attempted to controvert those arguments by asserting the existence of a constitutional power; but the argument was evaded by contending that the third article of the treaty did not stipulate for any admission as a State. It is true that it may be inferred, from the remarks of one or two of the friends of the administration, that personally they were ready to assert that the territory acquired

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could be admitted, but the argument was suffered to go by default.

Upon the question, very much discussed in the preceding debate, whether the United States possessed a constitutional power to acquire territory by purchase, permit me to say that I have no doubt that such a power exists in certain cases as an incident to the powers expressly granted. The right to make war may involve a right of conquest as an incident. It does not follow that the subject-matter of the conquest is to become one of the States of the Union. Nor is it by any means to be concluded, that because the United States may acquire territory by conquest, they may acquire it by purchase in any and every case and for every purpose. The United States have no right to purchase territory merely for sale again. But the purchase may be made as an incident to the power to regulate commerce, embracing the power to provide for the necessities of commerce. On this principle, the arrangement with Spain was lawful; and a purchase for the purpose of the free navigation of the river, and for a place of deposit and transhipment, was within the just constitutional powers of the government. If this could not be effected without the purchase of the whole of Louisiana, I do not doubt the right to acquire that territory, and then to sell any part of it which was not necessary for the purpose for which it was required, or to retain it as a territory. But all that is far from proving a right on the part of Congress to admit any portion of it as a State.

Along with the right to acquire territory is the right to govern it. I shall not detain you with an argument to show this. It results as a necessity almost; as a right, certainly, proved upon sound principles, and shown by a uniform prac-

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tice of this government up to the present time; not even abandoned at the present day.

Nor shall I stop to show that the stipulation in the treaty, that the inhabitants of the ceded territory should be incorporated into the Union, had no relation to those parts of the territory in which at the time there were no civilized inhabitants, and gave no rights to their future inhabitants. France had no intention and could have no desire to provide for the comfort and security of persons who, half a century afterwards, should emigrate from the States and settle in the unsettled portion of the country which she ceded. It was very clearly shown in the debate in 1803 that the treaty-making power could not stipulate for the admission of a State, so as to require its admission. But if it could, the third article of the treaty did not extend to the "howling wilderness," nor does the fact that slaves then existed in Louisiana show any right now to hold them in Kansas.

The question whether a State formed out of territory acquired since the adoption of the Constitution, could be admitted by Congress, came before that body again in 1810–11, on the application of Louisiana for admission. — Notwithstanding the opinions of Mr. Jefferson and others, the dominant party did not see fit to propose an amendment of the Constitution.

The success of the application was a foregone conclusion, but the minority were not willing to yield a constitutional principle without an attempt to maintain it; and the friends of the measure were therefore compelled to contend for the power. The attempt to maintain the doctrine even at that late day, and under such circumstances, is to have its full weight. Unfortunately for the argument, however, the rea-

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sons given tend either to prove nothing, or to prove the converse of the proposition which they are adduced to support.

Mr. Rhea, of Tennessee: —

"We have been told by that gentleman that though States may be admitted into the Union, no territory which did not belong to the original States can be admitted to be a State. I, said Mr. R., do solemnly protest against this doctrine, and do deny its constitutionality. It is with States as with individuals; if an individual, the head of a family, purchases a farm adjoining that on which he lives and resides, and probably (?) acquires all the right and title thereto, will any one deny it to be his? Will any one say that he has not power to incorporate it with his former farm, so that both shall be one, or in other words, that purchased with the other shall be but one? It is believed no one will say so. The purchaser, Sir, can do more; he can place his son or sons thereon, and although so placed, and out of their father's house, they will remain belonging to the family. The United States, a sovereign, have power to purchase adjacent territory."

The Honorable gentleman failed to remember that the owner of a farm is not created by a written constitution for certain limited purposes.

Mr. Gholson, of Virginia: —

"In this delegation of power I can perceive nothing to warrant the inference that it is confined to such territory only as the United States then possessed, or that it excludes the incorporation into the Union of subsequent acquisitions. Indeed this is altogether a novel doctrine, and all the interpretations of the Constitution have been contrary to it. Upon examination, I presume it would prove too much even for its advocate. For if the construction insisted on would exclude Orleans from the Union, it would likewise exclude the Mississippi Territory, since the latter as well as the former was acquired by the United States posterior to the adoption of the Constitution; and the gentleman has not applied his doctrine to the Mississippi Territory; nor will it, I imagine, be attempted to be shown that the Mississippi is to be

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shut out of the Union, contrary to our engagements to Georgia, when she ceded to the United States that territory."

But Georgia was within the limits of the United States, and the territory ceded by her therefore not foreign territory.

Mr. R. M. Johnson, of Kentucky, after reciting the third article of the treaty: —

"We are thus solemnly bound by compact to admit this Territory into the Union as a State, as soon as possible, consistent with the Constitution of the United States. What principle of the Constitution will be violated by their admission into the Union as a State? In fact, we are bound by the principles of the Constitution; we are bound to the people of the United States; we are bound by conscience, and we are bound by a still more sacred tie to Him who gave us independence, to extend the blessings of liberty to these people whenever it is practicable."

Mr. Macon, as cited by Mr. Quincy, said: —

"If this article had not territories without the limits of the old United States to act upon, it would be wholly without meaning. Because the ordinance of the old Congress had secured the right to the States within the old United States, and a provision for that object, in the new Constitution, was wholly unnecessary."

Mr. Bibb cited the first part of the clause, "New States may be admitted into the Union," and said there was a general power granted, and what followed showed two limitations upon it, and, according to his rule, "the expression of these two excluded all idea of any other." — Whereas, in truth, the limitations applying solely to territory within the United States, show the scope and intent of the general clause to which they are attached. If that had been in-

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tended to be universal, there would probably have been some limitations without as well as within.

Mr. Poindexter, delegate from Mississippi, argued that other territory than that belonging to the United States at the time of the adoption might be admitted, because it had been the constant practice to annex Indian territory to the old States, and to form new States of lands purchased from different tribes of Indians in the United States, — alleging that they were foreign powers; not considering that the statement itself showed that the lands were within the United States, and that the political doctrine is that the Indians have only a usufructuary right.

Mr. Wright, of Maryland, urged that Vermont was not a member of the Confederation, nor of the Convention; that she therefore was not one of the United States; was foreign as to them, and she had been admitted, and correctly so, for a long period; forgetting to remember that the territory was claimed by New York, and some of it by New Hampshire, and that it was within the limits of the United States, as defined by the treaty of peace. He contended further, that as the admission of Canada into the Confederation was provided for in the Articles, it could not be doubted that she might be received as a new State by becoming independent, or by purchase; whereas, as has been already suggested, the reason why, after the peace, Canada should have been intentionally excluded from any admission, is quite apparent.

Mr. Wheaton of Massachusetts, and Mr. Gold of New York, denied the right to admit. And Mr. Quincy, who now, at a patriarchal age, contends for constitutional freedom with the vigor and ardor of youth, made a most eloquent argument against the admission, in the introductory part of which he

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uttered the memorable declaration, the latter part of which, slightly changed, furnished for a long period, a sort of political war-cry for his opponents: —

"I am compelled to declare it as my deliberate opinion, that, if this bill passes, the bonds of this Union are virtually dissolved; that the States which compose it are free from their moral obligations, and that, as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation — amicably if they can, violently if they must."

I should not do justice to the subject, if some further extracts from that speech were not presented: —

"I think it may be made satisfactorily to appear not only that the terms 'new States' in this article did mean political sovereignties to be formed within the original limits of the United States, as has just been shown, but, also, negatively, that it did not intend new political sovereignties, with territorial annexations, to be created without those original limits. This appears first from the very tenor of the article. All its limitations have respect to the creation of States, within the original limits. Two States shall not be joined; no new State shall be erected, within the jurisdiction of any other State, without the consent of the legislatures of the States concerned, as well as of Congress. Now, had foreign territories been contemplated, had the new habits, customs, manners, and language of other nations been in the idea of the framers of this Constitution, would not some limitation have been devised, to guard against the abuse of a power, in its nature so enormous, and so obviously, when it occurred, calculated to excite just jealousy among the States, whose relative weight would be so essentially affected by such an infusion at once of a mass of foreigners into their Councils, and into all the rights of the country? The want of all limitation of such power would be a strong evidence, were others wanting, that the powers, now about to be exercised, never entered into the imagination of those thoughtful and prescient men, who constructed the fabric. But there is another most powerful argument against the extension of this article to embrace the right to create States without the original limits of the United States, deducible from the utter silence of all debates at the period of the adoption of the Federal

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Constitution, touching the power here proposed to be usurped. If ever there was a time, in which the ingenuity of the greatest men of an age was taxed to find arguments in favor of and against any political measure, it was at the time of the adoption of this Constitution. All the faculties of the human mind were, on the one side and the other, put upon their utmost stretch, to find the real and imaginary blessings or evils likely to result from the proposed measure. Now I call upon the advocates of this bill to point out, in all the debates of that period, in any one publication, in any one newspaper of those times, a single intimation, by friend or foe to the Constitution, approving or censuring it for containing the power, here proposed to be usurped, or a single suggestion that it might be extended to such an object as is now proposed. I do not say that no such suggestion was ever made. But this I will say, that I do not believe there is such an one anywhere to be found. Certain I am, I have never been able to meet the shadow of such a suggestion, and I have made no inconsiderable research upon the point. Such may exist — but until it be produced, we have a right to reason as though it had no existence."

"But there is an argument, stronger even than all those which have been produced, to be drawn from the nature of the power here proposed to be exercised. Is it possible that such a power, if it had been intended to be given by the people, should be left dependent upon the effect of general expressions; and such, too, as were obviously applicable to another subject; to a particular exigency contemplated at the time? Sir, what is this power we propose now to usurp? Nothing less than a power changing all the proportion of the weight and influence possessed by the potent sovereignties composing this Union. A stranger is to be introduced to an equal share, without their consent. Upon a principle, pretended to be deduced from the Constitution, this Government, after this bill passes, may and will multiply foreign partners in power, at its own mere motion; at its irresponsible pleasure; in other words, as local interests, party passions, or ambitious views may suggest. It is a power, that, from its nature, never could be delegated; never was delegated; and as it breaks down all the proportions of power guarantied by the Constitution to the States, upon which their essential security depends, utterly annihilates the moral force of this political contract."

In the year 1832, Mr. John Quincy Adams addressed a

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letter to Mr. Speaker Stevenson, which was published in the National Intelligencer. Some portions of it relate particularly to this subject. Brief paragraphs follow: —

"Had I been present, I should have voted in favor of the ratification. I had no doubt of the power to conclude the treaty. I did vote and speak in favor of the bill making appropriations for carrying the treaties into execution. . . .

"But I voted against the bill 'to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th April last, *and for the temporary government thereof.*' (See Biorens's United States Laws, Vol. III. p. 562, both those Acts.) My speech on the bill authorizing the creation of the stock, may be found in the Fourth Volume of Elliot's Debates and Illustrations of the Federal Constitution, p. 258; and it points out the distinction upon which I voted for one of those bills, and against the others. . . . .

"I believed an amendment of the Constitution indispensably necessary to legalize the transaction; and I further believed the free and formal suffrages of the people of Louisiana themselves were as necessary for their annexation to the Union, as those of the people of the United States. I made a draft of an article of amendment to the Constitution, authorizing Congress to annex to the Union the inhabitants of any purchased territory; and of a joint resolution directing that the people of Louisiana might meet in primary assemblies, and vote upon the question of their own union with the United States. Of both these experiments, had Mr. Jefferson had the courage to make them, the result was as certain as the diurnal movement of the sun. But Mr. Jefferson did not dare to make them. He found Congress mounted to the pitch of passing those acts, without inquiring where they acquired their authority; and he conquered his own scruples as they had done with theirs. . . . .

"The administration, and its friends in Congress, had determined to assume and exercise all the powers of government in Louisiana, and all the powers for annexing it to the Union, without asking questions about their authority. . . . .

"A letter from Mr. Jefferson to Dr. Sibley has been recently published, written June, 1803, after he had received the Louisiana treaties, in which he clearly and unequivocally expresses the opinion that an amendment to

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the Constitution would be necessary in order to carry them into full execution. Yet, without any such amendment to the Constitution, Mr. Jefferson did, as President of the United States, sign all those acts for the government and taxation of the people of Louisiana, and did exercise all the powers vested in him by them." . . . .

And last, though not least, Mr. Webster's opinion that the true construction of the Constitution did not authorize the admission of States formed from foreign territory, is clearly expressed in his speech on the exclusion of slavery from the territories; and, I think, in others of his speeches.

I claim thus to have shown you; — by the course of the debates at the time the Constitution was formed, and afterwards; — by argument; — and by the opinions of eminent men; — that the original and true construction of the clause contained in it, giving power for the admission of new States, did not authorize the admission of States formed from foreign territory; and that Louisiana, therefore, was admitted by an act of sovereign power, under color of the Constitution, but not in pursuance of its provisions. — But she is in the Union, and I trust will long remain there. She cannot be put out, nor go out, except by a great political convulsion. Congress could admit, as we see, because Congress did admit; but Congress does some other things without a constitutional warrant. That admission, like those other things, once done, cannot be recalled; and, therefore, *as to the fact of admission itself*, it is the same as if a constitutional authority existed. And so of other States admitted since, and coming within the principle.

But it is by no means true that all the results should follow, the same as if the admission were constitutional. The admission is to be judged of by itself, and not by the constitutional rules which it has violated.

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Suppose, instead of the conclusion that Louisiana was admitted by an act of sovereign power, it should be conceded that she was admitted, not without constitutional warrant, but by virtue of a construction of the third section of the fourth article. That is shown not to have been the original meaning nor the original construction, and therefore not the true construction; and such new construction of that article does not enlarge the compromise provision in relation to the representation. The States thus admitted are admitted on such terms as Congress shall prescribe under the new construction, so those terms do not violate the equal rights of others; and especially the equal right of representation, to which the other States of the Union are entitled, except so far as equality has been surrendered by the true construction of the clause respecting representation. — In other words, the enlargement of the clause respecting admission, by construction, and not by the act of the people, does not enlarge the compromise in the clause of representation, nor the application of that clause to cases for which it was not intended.

But it may be said that Louisiana and other new States are entitled to the advantage of this slave representation by virtue of their acts of admission, (that of Louisiana providing, that the State "shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.") In fact a doctrine has recently been broadly asserted which goes still farther, and denies that Congress has a right to attach an exclusion of slavery to the admission of a State; alleging that if Congress admits a State, it must be admitted on an equal footing with other States, and that the whole question of slavery, so far as the States are

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concerned, is a local question and the subject of purely local law. It was said in the Convention at Boston: —

"The government of the United States has no power either to make or to unmake State Constitutions. Gentlemen seem to forget that the government of the United States is a government with limited and defined powers — and that this whole question of slavery is, so far as the States are concerned, a local question and the subject of purely local law. If Congress admit a State at all, it must admit it on an equal footing with the other States. The power of Congress to admit a State is the power to admit just such States as the existing States are. The power to admit at all is acquired from an explicit provision of the Constitution, and the word State in that provision means, and can only mean, just what the word State means wherever it occurs in the same instrument.

"To admit a community which should not possess the same degree of sovereignty as is possessed by the people of the existing States, would not be to admit a State — it would be the admission of something else than a State. But Congress may refuse to admit. Of course she may. And these logicians without logic say if she may refuse to admit she may surely admit with conditions. Now, sir, certainly with *some* conditions — but those conditions must be in regard to subjects concerning which the Constitution shall have conferred upon Congress power in reference to the existing States of the Union."

Upon this I remark, first, that the opinion of Mr. Webster, to whose opinions the speaker has been supposed heretofore to have paid some deference, is distinctly shown to have been the other way in his speech on the admission of Texas, in 1845; in that on the exclusion of slavery, in 1848; and in other speeches. He could have had no doubt that a condition annexed, that slavery should be excluded, would be valid.

But I will not rely upon authority alone to controvert this proposition.

The deed of cession by Virginia of the territory northwest

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of the Ohio, required that the territory ceded should be laid out and formed into States containing a suitable extent of territory, &c., "and that the States so formed should be distinct republican States, and *admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence as the other States.*" It was completed, I think, in March, 1784.

It is stated in a paper read by Governor Coles before the Historical Society of Pennsylvania, in June last, that a few days after the deed of cession, at the instance of Mr. Jefferson a committee was raised, consisting of Thomas Jefferson of Va., Samuel Chase of Maryland, and David Howell of Rhode Island, for the purpose of organizing and providing for the government of the territory. Mr. Jefferson, as chairman of the committee, made a report, now to be seen in the archives of Congress, in the Department of State at Washington. It provided, "that the territory ceded, or to be ceded by individual States to the United States, 'shall be formed into distinct States,' the names of which were given and the boundaries defined; and the divisions thus made contemplated and embraced all the western territory lying between the Florida and Canada lines. That is, it included the territory which had been 'ceded' to the northwest of the Ohio River, and that 'to be ceded' to the southwest of that river, or elsewhere, by individual States to the United States." There was a proviso, that both the Territorial and State Governments should be established on a basis, the fifth article of which was, that after 1800 there should be neither slavery nor involuntary servitude in any of said States, otherwise than in the punishment of crimes, &c. On the 19th of April, on motion of Mr. Spaight of North Carolina, this article was struck out. There were six States in favor of the article, three against it, and one

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divided; but it required two thirds of the ten States voting to adopt it. This plan of government, as thus amended, was adopted April 2d, 1784, but no organization appears to have been had under it.

In March, 1785, Mr. King of Massachusetts moved a similar provision, which was committed to a committee, but what further action was taken upon it does not appear.

In July, 1786, Congress recommended to Virginia, to revise her act of cession so as to empower Congress to divide the territories into not more than five, nor less than three "distinct republican States," which should thereafter "*become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence, as the original States.*"

Before this was done by Virginia, Congress adopted the immortal Ordinance of July 13th, 1787, and in anticipation of the consent of Virginia, inserted in the 5th article, a provision that there should be formed in the Territory, not less than three, nor more than five States, the boundaries of which should become fixed and established as soon as Virginia should alter her act of cession. And the 6th article prohibited slavery, with a proviso by which a fugitive slave might be reclaimed. This Ordinance passed unanimously.

On the 30th of December, 1788, Virginia passed an act, which, after stating, by way of preamble, the recommendation of Congress; and setting forth the passage of the Ordinance of 1787; recited, ratified, and confirmed the fifth article of the Ordinance;— thus complying with the recommendation.

Now, it seems quite clear, that neither Virginia nor Congress supposed that the prohibition of slavery rendered the States to be formed under the restriction, inferior to the other States; or in any way deprived them of "the same rights of sovereignty, freedom, and independence, as the other

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States," which they were to have by the deed of cession, and by the act of Congress requesting an alteration of it. The only change was in limiting the number of States and establishing certain boundaries.

The several acts admitting the States northwest of the Ohio, like the act respecting Louisiana, admit them "into the Union upon an equal footing with the original States, in all respects whatsoever." And yet slavery is for ever prohibited there.

A prohibition of slavery, then, does not deprive a State of its equality with the other States.

The six free States in the Northwest, will learn with some surprise probably, that they hold any degraded rank in the Union. Until the shining of the light which has recently burst forth from the darkness of slavery, no one had a surmise that they were not in the Union upon "an equal footing with the original States."

Again; — the admission of Louisiana was clogged with divers "fundamental conditions." It is admitted that Congress may annex "*some* conditions." Why not a condition restricting slavery? What is there in this condition that renders it improper above all others? Nothing! Nothing whatever. On the contrary, it seems to be just the thing respecting which, a condition should be imposed because of the difference of situation of the different States in that respect, and the inequality of the representation. As some of them are already prohibited from having slaves, they may well insist that if others are admitted it shall be with the same prohibition which rests on them. And what they may insist on, other States are at equal liberty to contend and vote for.

But still further. The article authorizing Congress to admit new States, does not prescribe the terms on which they

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shall be admitted. There is nothing, then, against the annexation of any condition which Congress pleases to attach. Any condition, therefore, which is not in conflict with the great principles of the republic, is admissible; and slavery, thank God! is not yet one of those principles. The debate, and the action of the Constitutional Convention, striking out the restriction which had been reported, show that Congress was intentionally left free to impose conditions upon the admission of the new States within the contemplation of the article; and that this was designed to extend even to a restriction upon equal representation in Congress, if the case should appear to require it. Virginia provided against the exercise of this power of Congress to restrict slavery, in the case of Kentucky, by her act of consent. And so did North Carolina, in relation to Tennessee. It is quite clear, then, that when new States are formed out of territory not within the United States at that time, the admission may be upon any terms which Congress sees fit to annex, if they are consistent with the existence of a republican government. If the admission is by an act of sovereign power not warranted by the Constitution, the act of power will of itself determine the limits of its exercise. If it be by a new construction of a constitutional article, such construction may authorize an exercise of the power upon any limitations or conditions, provided they are not in contradiction to the express terms of the article, or to the rest of the instrument, so as to make the Constitution at variance with itself.

It may be asked, — "If the Constitution does not confer upon Louisiana and Missouri a right to a representation on account of their slaves; and if the admission of a State upon terms of equality does not give a right to hold slaves, and have such a representation; how is it that those States have now,

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each a representative upon the slave basis? The answer is, that they have such representation by the last apportionment act. Congress has seen fit to place them in the same condition as if they were within the constitutional provision. And as the House is the judge of its own elections, they are secure of it until the next apportionment. In fact, so long as the apportionment stands, the House, it may be said, is bound to recognize the right to the representation that it gives. Congress has admitted the State. The thing is done and the admission stands. It cannot be repealed. Congress has apportioned the representation, and it stands according to the apportionment until terminated.

Those States having had a representation founded on the slave basis, may be unwilling to part with it hereafter; and I, for one, am quite content that they shall retain it, *upon a compromise* that there shall be no farther extension of slavery; provided the compromise may be one which shall not be *compromised* over again.

The argument which I have thus stated respecting the constitutional right to admit new States, is of no practical value so far as it regards the admission of the territories now belonging to the United States. Their admission is a political necessity; and, moreover, the power has been so often exercised, that the further exertion of it in respect to the territories now acquired, may be said to be settled by construction. But it may serve to show that no other territories ought to be acquired for the purpose of admission. — It may serve to show that the territories now existing, even if admitted with slavery, will not be entitled to a representation upon the slave basis. — It may serve to show, that if a State should be

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In the Revised Statutes of Massachusetts, Chapter 23, Section 7, I read as follows: —

"It shall be the duty of the president, professors, and tutors of the university at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and all other instructors of youth, to exert their best endeavors, to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other virtues, which are the ornament of human society, and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above-mentioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices."

QUERE: — How far a Professor of a College "compromises the neutrality of his position," when, as a private citizen, before a different auditory, and in another connection, he endeavors to maintain those principles of piety, justice, regard of truth, love of country, humanity, and those other virtues which are the ornament of human society and the basis upon which a Republican Constitution is founded, which it is made his duty, by statutory enactment, to impress upon the minds of his pupils? — How far he departs from "the propriety of his course" when he endeavors to lead others "into a clear understanding of the tendency of the above-mentioned virtues to preserve and perfect a Republican Constitution, and secure the blessings of liberty;" — and when he attempts to disseminate a knowledge of the true principles of the Constitution of the United States?

Perhaps it may be admitted as some extenuation of my failure to know when, and where, and upon what subjects I may speak, that I was not before aware of the fact that upon great questions of morals and politics, involving, possibly, the very existence of a free government, I hold any neutral position.

J. P.

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